

Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Zuri Farnago, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Mr. Farnago may be reached at (404) 562-9152, or [farnago.zuri@epa.gov](mailto:farnago.zuri@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this notice, no further activity is contemplated. If EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: September 3, 2010.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 10, 13, 21, and 22**

[FWS-R9-MB-2008-0103]  
[91200-1231-9BPP]

RIN 1018-AI97

**Migratory Bird Permits; Possession and Educational Use**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service ("we" or "the Service") is proposing a permit regulation to authorize the possession and use of migratory birds in educational programs and exhibits. The proposed rule also would revise existing regulations authorizing public exhibition of eagles. In addition, it would remove the permit exemption for some public institutions for possession of live migratory birds and migratory bird specimens, and clarify that birds held under the exemption must be used for conservation education. For specimens such as feathers, parts, carcasses, nonviable eggs, and nests, the regulations would be updated and clarified to more accurately reflect the types of institutions that may hold specimens for public educational purposes. The regulations would allow exempt institutions to transfer migratory birds to individuals and entities authorized by permit to possess them. Sale and purchase by permittees and exempt institutions would be restricted to properly-marked, captive-bred birds. **DATES:** Submit written comments on or before December 20, 2010, to the address below.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U. S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018-AI97; Division of Policy and Directives Management; U. S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203-1610.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Eliza Savage, Division of Migratory Bird Management, U. S. Fish and Wildlife Service, 4401 North Fairfax Drive,

Mailstop 4107, Arlington, VA 22203-1610; or 703-358-2329.

**SUPPLEMENTARY INFORMATION:**

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, 4<sup>th</sup> Floor, Arlington, VA 22203-1610; telephone 703-358-2329.

**Background**

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits possession of any bird protected by treaties between the United States and Canada, Mexico, Japan, and Russia unless the possession is authorized under regulation and/or by permit. Birds protected by the MBTA are referred to as "migratory birds." The Service regulates the use of migratory birds through regulations at parts 20 and 21 of title 50 of the Code of Federal Regulations (CFR). Unless exempt under regulations at 50 CFR 21.12, you must obtain a permit from the Service to possess a migratory bird for use in educational programs. Because there are currently no specific educational-use permit regulations, we authorize educational activities that involve migratory birds using Special Purpose permits issued under 50 CFR 21.27, which provides for permits for activities not specifically authorized by an existing permit category. In the absence of specific regulations addressing educational activities using migratory birds, the terms and requirements governing this activity are currently set forth in a list of standard conditions issued with each permit.

Through this rulemaking, we propose to establish educational-use permit regulations to hold live nonreleasable or captive-bred migratory birds and nonliving specimens thereof for use in teaching people about migratory bird conservation and ecology. The public input we receive in response to this proposed rule will help us develop final regulations that will provide consistency and clarity in the administration of permits for migratory bird educational activities nationwide, and ensure that migratory birds are used humanely and in a manner consistent with the protections afforded by the MBTA.

We drafted this proposed regulation with the benefit of public comment received in response to an advance notice of proposed rulemaking published in the **Federal Register** on October 13, 2005 (70 FR 59710). In that notice, we solicited public input on facilities standards, experience criteria, and commercialization, among other issues associated with use of migratory birds for educational purposes. We received more than 200 comments, most of which were quite detailed and substantive, and were integral to crafting this proposed regulation.

The primary purpose of the proposed permit is to authorize conservation education programs. Each program would have to provide a message about migratory bird conservation, natural history, biology, or ecology. As one commenter suggested, the permit's purpose is to "instill in a person memorable information that benefits birds or the natural world." The message does not necessarily need to be spoken to be conveyed; creating an attitude can be as important as imparting information. As long as the program addresses conservation, natural history, biology, and/or ecology, it may also contain additional educational content on other topics such as Native American cultural heritage or falconry. The requirement to have a conservation message does not preclude presentations with migratory birds from being entertaining. As another commenter put it, "laughter and amusement open pathways for receptive learning. The goal is to inspire." However, this permit would not allow use of a migratory bird in a presentation in which the bird is induced to perform tricks or imitate human or other behavior unnatural for the species.

Under no circumstance would we authorize the use of migratory birds to endorse or promote any product or service, other than the conservation objectives of a sponsor, the permit holder, or the U.S. Fish and Wildlife

Service. As long as this condition is met, migratory birds may be used in conservation education programs at commercial venues. We believe that commercial venues can provide opportunities to bring conservation messages to large numbers of people who may not otherwise be exposed to this type of educational program.

The permit would require permittees to conduct a minimum of 12 public educational programs per year that are open to the general public or presented at an accredited public or private school with the birds held under the permit. A facility such as a zoo, in which birds are displayed in permanent enclosures and not presented in demonstrations or programs, must be open to the general public at least 400 hours per year. The requirement that displays or programs be open to the general public or presented in a formal educational setting is integral to the purpose of the permit, because migratory birds are a public resource, and because it is the Service's mission to further their conservation. We would issue educational permits only when the public would benefit by gaining a greater understanding of the wild nature and conservation status of migratory birds.

Being open to the general public does not mean that presentations conducted under this permit must be free of charge. For migratory bird permits, we define "open to the general public" as "available to the general public and not restricted to any individual or set of individuals, whether or not a fee is charged." Therefore, the required programs cannot be limited to specific audiences; all members of the public would have to be eligible to attend the programs. The exception would be classrooms in accredited schools (because most accredited schools are open to the public, even though specific classes may be closed to a wider audience). To illustrate what is meant by "open to public," a wedding reception limited to guests who received a wedding invitation is not open to the general public, whereas, an educational program offered at a national park is. As another example, Disneyland is open to the general public because anyone who is willing to pay the admission fee may be admitted.

Provided that the conservation education component is a prominent element within the presentation, the programs are open to the general public, no product is endorsed, and all the conditions for possessing birds under the permit are satisfied, this permit would be available to for-profit institutions.

As long as the permittee satisfies the requirements for being open to the general public, he or she can also present programs for private or invitation-only gatherings, provided that the required conservation message is presented and all the other conditions of the permit are met.

We recognize that the requirement that each bird be used in a minimum of 12 public educational programs per year could be hard on old or ailing birds. If it would no longer be humane to use a bird for educational programs, the educator could request an exception from their permit office from using that bird in the required 12 programs.

We propose to use two publications as guidance for evaluating facilities and experience for the housing and care of migratory birds and eagles held under this permit. For raptors, we would use the housing recommendations of the University of Minnesota Raptor Center's *Raptors in Captivity: Guidelines for Care and Management* (2007). For other migratory birds, we would use the National Wildlife Rehabilitator's Association's *Wildlife in Education: A Guide for the Care and Use of Program Animals* (2004). The recommendations in the two publications would serve as guidance for the issuing office; we could authorize variation from the standards where doing so would be reasonable and necessary to accommodate a particular educator's circumstances, and would not adversely affect any bird held by the educator. The proposed rule contains a "grandfather clause," which states, in part: "If your facilities have already been approved by the Service on the basis of photographs and diagrams, and authorized under a § 21.27 Special Purpose-Education permit or § 22.21 Eagle Exhibition permit, then they are 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 hold)."

Similar to the provisions of the migratory bird rehabilitation regulations, this proposed rule would require subpermittees to be at least 18 years old. This requirement does not prevent a permittee from allowing younger persons to participate in the activities authorized by permit; a volunteer is not required to be a subpermittee if he or she is supervised by the permittee or a subpermittee, and this would apply to persons under 18 years of age.

This rule would limit the sale and purchase of birds held under the permit to the following categories: (1) raptors bred under a Raptor Propagation permit and marked with a seamless metal band provided by the Service, (2) waterfowl bred under a Waterfowl Sale and Disposal permit and marked in accordance with 50 CFR 21.13, and (3) game birds bred under a Special Purpose Game Bird permit and marked in accordance with 50 CFR 21.13. Permittees would be authorized to sell and purchase such birds to and from one another and to and from holders of other types of permits that authorize purchase and sale of such birds. Transfer of other migratory birds held under the permit would be allowed by donation only. Permittees would not be authorized to breed birds held under the permit.

The proposed rule contains guidance we would use to evaluate applicants' experience to determine what species they are qualified to hold. The table addresses only the more commonly-used raptors, as well as corvids, because those are the species for which we have some information on which to base our criteria, including recommendations from the publications noted above and from commenters responding to our 2005 notice regarding this proposed rulemaking. In response to commenters, we placed the more commonly-used species into four experience categories, according to the skill and experience needed to handle them. Some species of migratory birds not listed in the table may be suitable for educational use, but we would need more information to assess their suitability and the experience needed to handle and care for them. Accordingly, we are specifically soliciting input from persons with some knowledge of and/or experience with the 30 MBTA-protected raptor species not listed in the table, as well as other species of migratory birds, regarding temperament and other physical and behavioral traits that could affect their suitability for educational use.

To clarify terms used in this rulemaking, we propose several new regulatory definitions that would apply to migratory bird permits. The terms we propose to define are "nonreleasable bird," "open to the general public," "public institution," "public museum," and "public zoological park." We also propose to amend the definition of "public" in 50 CFR part 10.12 to remove its application to migratory bird and eagle permits, since we are clarifying how it applies to migratory bird permits through the above definitions and to

eagle permits through definitions we propose under part 22 (see below).

#### Eagle Educational Use

This proposed rule would also revise regulations governing possession and use of bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) for educational purposes. Currently, regulations governing the use of eagles for exhibition purposes are at 50 CFR 22.21. The existing eagle exhibition permit regulations are combined with eagle scientific permit regulations and addressed in the same section at 50 CFR 22.21. This proposed rule separates the two activities to create stand-alone eagle exhibition (educational-use) regulations.

These proposed eagle educational-use regulations largely incorporate by reference the regulations proposed herein for possessing other MBTA-protected birds for educational purposes. They differ only in a few aspects. First, all live eagles held under the regulation would have to be nonreleasable (whereas permits for other migratory bird species would authorize possession of captive-bred, as well as nonreleasable, birds). Second, as mandated by the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668 *et seq.*), only public museums, public scientific societies, and public zoological parks are allowed under the Eagle Act to obtain permits to exhibit eagles. The rule proposes regulatory definitions for "public museum," "public scientific society," and "public zoological park" to remove ambiguity about who may qualify to receive eagle educational use permits. The new definitions are intended to be as broad as possible within the intent of the Eagle Act so as not to unnecessarily restrict placement of eagles for educational use with otherwise qualified individuals and organizations. See our October 13, 2005, **Federal Register** notice at 70 FR 59712, for more discussion of this issue.

Third, differences between the MBTA and the Eagle Act necessitate different requirements for international transport of eagle specimens than for other migratory bird specimens. The Eagle Act and implementing regulations at 50 CFR 22.12(a) prohibit permanent export or import of bald eagles. Thus, the proposed eagle regulations differ from the proposed migratory bird regulations because they incorporate existing regulations for exhibitions of eagle specimens that are taken out of and returned to the United States. Except for re-formatting and the addition of a three-year maximum permit duration, the eagle transport regulations would be unchanged.

Fourth, under the proposed eagle educational-use regulations, permits would authorize possession of non-living eagle specimens only if they were lawfully acquired prior to March 30, 1994, with very limited exceptions. That is the date that the Service began implementing Director's Order 69, which requires Service employees to ensure that all eagle specimens are sent to the National Eagle Repository, the Service's distribution center for eagle parts and feathers for Native American religious use. Consequently, these regulations provide that we may permit transfer and possession only of specimens that were already lawfully possessed prior to that date, unless the specimen lacks ceremonial value due to poor condition or some other reason. As provided in Director's Order 69, the Regional Director may make exceptions for important resource needs.

Finally, the eagle educational-use regulations, in keeping with Director's Order 69, would require all carcasses and feathers that are not needed for imping (feather replacement) purposes for other live eagles to be sent to the National Eagle Repository.

Please note that although eagle scientific permit regulations are included in this proposed rulemaking, we are not making any revisions to those regulations at this time, except (1) as is necessary to separate the exhibition regulations from them (such as removing the phrases "and exhibition" and "or exhibition" throughout the regulation), and (2) changing the name of the permits from "Scientific collecting purposes" to "Scientific purpose," since those permits do not always authorize collection of specimens from the wild. To remove the references to "exhibition" from § 22.21, it was necessary to publish the text of the entire section, but we are not proposing any other revisions to it at this time.

Adding the definitions of "public museum," "public scientific society," and "public zoological park" to the part 22 eagle regulations could affect scientific permitting by clarifying eligibility of applicants. However, the new definitions are not intended to change the provisions of the eagle scientific permit regulations; we propose them here simply to clarify existing provisions for all eagle permits.

In separating the permit regulations for eagle exhibition from eagle scientific collecting, "take" of eagles would no longer be authorized under the exhibition regulations. This "revision" actually maintains the status quo: the only take of eagles that we have permitted under the existing eagle exhibition/scientific regulations was for

scientific collecting. The proposed regulations continue our policy of not issuing permits to take eagles from the wild for exhibition purposes.

The current eagle exhibition/scientific permit regulations are silent as to whether eagles used under the permit must be nonreleasable. Nevertheless, in keeping with the Eagle Act's requirement that the Secretary of the Interior shall issue permits to take and possess eagles only when "it is compatible with the preservation of the bald eagle or the golden eagle" (16 U.S.C. 668a), we have issued permits for eagle exhibition only for nonreleasable eagles. Taking eagles from the wild is necessary for some scientific research and other purposes, but it is not required for educational use because sufficient numbers of nonreleasable eagles are available for use in educational programs. Therefore, the proposed eagle educational-use regulations codify our policy of authorizing possession of nonreleasable eagles only.

#### **Fees and Permit Tenure**

We propose an application processing fee of \$100 for the educational use permit. This is \$25 more than the \$75 fee we currently assess for processing the Special Purpose permit and the Eagle Exhibition permit. However, the term of the proposed educational use permit would be five years, instead of the current three years, reducing the average cost per year. We propose to implement a \$50 amendment fee for substantive permit amendments, such as a change in the location and housing for the birds, increasing the number or species of birds, or adding new species to be held under the permit. Amendments for these types of permits are generally time-consuming and the \$50 amendment fee will help us recoup a larger portion of the costs of administering these types of permits. To prevent an undue burden on the permittee and unnecessary workload for the Service, permits would authorize the maximum number of birds—and species—for which the permittee qualifies, based on (1) facilities and caging, (2) the nature of the educational programs, and (3) the permittee's experience in handling and caring for birds and presenting programs. Authorizing the upper limit of birds and species will limit the need for amendments to situations where the permittee substantially modifies his or her facilities, experience, and/or educational programs.

#### **Transition of Current Permittees to Permits under New Regulations**

Current Special Purpose-Education permit holders and current Eagle Exhibition permit holders need not take any special action as a result of the new rule, if promulgated as proposed. When it is time to renew their permits, they should apply for renewal using the Service permit renewal form mailed to them by their Regional Permit Office. The permits will be renewed under the new permit categories created by this rule.

#### **Application and Annual Reporting Requirements**

This proposed rule does not specify what information an applicant must submit to apply for an educational-use permit or to file an annual report, other than that he or she must submit a completed application form, including any required attachments, to apply for a permit; and for annual reporting, the permittee must submit all the information required on the report form. By avoiding codification of application and reporting requirements, we can revise application and reporting requirements without undergoing the time-consuming rulemaking process. However, the public will have the opportunity to provide input on the content of these forms. All forms must be approved by the Office of Management and Budget every three years, and as part of that process, all new forms and all changes to forms are subject to public review via a series of notices in the **Federal Register**. We are not proposing any substantive changes to the existing application and report forms at this time. We will continue to use FWS Form 3-200-10c as the application form for a permit to possess live birds for educational use, FWS Form 3-200-10d to apply for possession of dead migratory bird specimens for educational use, and FWS Form 3-200-14 for possession of eagles and eagle specimens for educational use.

#### **Revisions to Migratory Bird Permit Exceptions**

This rule also proposes to amend regulations governing general migratory bird permit exceptions under § 21.12. Some entities (such as municipal game farms) exempted under current regulations for possession of specimens such as feathers, mounts, bones, nests, and nonviable eggs would no longer be exempted from the permit requirement, generally because those entities do not provide conservation education. The rule clarifies what entities qualify under the remaining exemptions and specifies

that the exemption is only for purposes of public conservation education and scientific research. Exempt institutions would be allowed to transfer migratory bird specimens to other exempt entities or to persons authorized by permit to possess such birds. The intent of the language within current regulations at § 21.12(b)(1) regarding to whom exempt institutions may donate birds is unclear and has been interpreted to limit transfer of birds only to other exempt entities.

The rule would limit the permit exception for possession of live birds to institutions accredited by the Association of Zoos and Aquariums (AZA). All other individuals and entities that keep live birds for education purposes would be required to obtain an educational use permit within one year after the final rule becomes effective. The permit-exempt AZA institutions would be required to comply with the husbandry standards and several other conditions that apply to permittees. These revisions would ensure that all entities that hold live birds for educational use are held to the same standards. Sale and purchase between exempt institutions and permittees and among exempt institutions would be restricted to captive-bred migratory birds. The rule would not allow exempt institutions to take birds from the wild; to do that, a scientific-purpose permit must be obtained.

Entities that were previously exempted from the permit requirement would be allowed to retain any migratory live birds and dead specimens already in their possession on the date the rule becomes effective without a permit. However, a permit would be required to acquire and possess any additional live migratory bird, including progeny, or migratory bird specimen after that date without first obtaining the appropriate permit. Nor would such "grandfathered" holders be allowed to sell or transfer live birds or dead specimens without a permit. Live birds must be held under the husbandry standards of 21.32(b)(1)(i) though (vii) and 21.32(b)(2).

Entities that remain exempt from the permit requirement to hold dead specimens would be allowed to accept such specimens from members of the public who, without a permit, pick them up. Those persons would be exempt from the permit requirement for such one-time salvage provided they promptly donate the specimens to a person or institution authorized to possess the specimens by permit or permit exception.

We also propose new permit exemptions to allow Federal, State, tribal, or local natural resource agencies to collect and hold birds in the course of official duty. Finally, employees and agents of the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, U.S. Department of Commerce, who monitor bycatch on fishing trawlers would not need a permit to possess migratory birds when carrying out those duties.

#### Minor Revisions to Rehabilitation Permit Regulations

We propose three minor amendments to regulations governing permits for migratory bird rehabilitation at 50 CFR 21.31 because both changes have some relation to the use of birds held for educational use. First, we propose limited conditions under which birds undergoing rehabilitation for release to the wild can be intermingled with birds held under other types of permits. They could be housed with birds held under another type of permit only for fostering purposes, and only if the fostering bird continues to be used according to the purposes and conditions of the permit under which it is held.

Second, we propose to allow nonreleasable birds to be kept indefinitely under the rehabilitation permit for purposes of foster parenting. Currently, the rehabilitation permit regulations require that all nonreleasable birds be transferred to other types of permits, such as educational use. However, the educational use permit authorizes possession only of birds used for educational purposes, and in some cases, a bird not suitable for educational use may make a good foster parent for orphaned young or juveniles undergoing rehabilitation. This amendment to the rehabilitation permit regulations would allow a suitable nonreleasable bird to be held under the rehabilitation permit indefinitely for foster parenting purposes if authorized by the regional migratory bird permit office.

Finally, we are adding the requirement that the rehabilitator receive approval from the permit office before transferring a releasable wild raptor to a permitted falconer authorized to hold eagles under his or her falconry permit.

#### Required Determinations

*Responsibilities of Federal Agencies To Protect Migratory Birds (Executive Order 13186).* This proposed 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 (E.O. 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 (E.O. 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.

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

*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 (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 proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. We estimate the proposed revisions to permit exemptions would require a permit to be obtained by about 400 institutions that are currently exempt from the permit requirement. Because approximately half of those institutions are governmentally funded and/or operated, they would not need to pay an application fee. Thus, if this proposal is adopted in full, we could expect about 200 institutions to pay a permit application fee that did not need to do so prior to this rulemaking, for a total cost of \$20,000 (200 x \$100 per application).

Some institutions that were previously exempt would incur costs in upgrading facilities to the standards required of permittees. However, we do not expect those costs to be high because many of these institutions already have suitable facilities.

Some permittees who need substantive amendments made to their

permits would be assessed a \$50 amendment fee if this rule is adopted. We estimate approximately 100 permittees per year would pay this fee, totaling \$5,000. Fees for new permits and permit renewals would increase by \$25 (from \$75 to \$100). We currently receive approximately 150 new permit applications and 200 renewals for migratory bird Special Purpose education and Eagle Exhibition permits per year. Were that to continue, the total permit application fee revenue increase would be \$8,750 per year. However, this permit regulation would also extend the permit term from three years to five years, reducing total renewal fees by 40 percent (\$20,000 x .4 = \$8,000) per year, resulting in an overall fee increase of approximately \$750 (\$8,750 - \$8,000) per year if the number of permittees were to remain unchanged. However, since this rule would likely result in about 200 new permittees who would be subject to application and renewal fees (as discussed above), averaging 40 new renewals (\$4,000) per year, the net cost to permittees from this rulemaking will be \$4,750 per year (\$4,000 + \$750). Therefore, we certify that this action would not have a significant economic impact on a substantial number of small entities. A final Regulatory Flexibility Analysis is not required.

*Small Business Regulatory Enforcement Fairness Act (SBREFA).* This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule would not have an annual effect on the economy of \$100 million or more. It would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule would not have a significant adverse effect 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.*):

a. This rule would 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 would not impose a cost of \$100 million or more in any given year on local or State government or private entities.

b. This 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 Executive Order 12630, the rule does not have significant takings implications. This rule would 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 the *Regulatory Planning and Review* section above, this rule does not have significant Federalism effects. A Federalism assessment is not required. Due to 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 effect on fiscal capacity, 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 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 for which Office of Management and Budget approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Information collection associated with migratory bird permit programs is covered by existing OMB Control No. 1018–0022, which expires on November 30, 2010. The Service may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a current valid OMB control number.

*National Environmental Policy Act (NEPA)* (42 U.S.C. 4321 *et seq.*). We have determined that this rule is categorically excluded under the Department’s NEPA procedures in 516 DM 8.5(A)(1) because this rule codifies policies the Service is already implementing under a different regulation with changes that have “no or minor potential environmental impact.” The rule also is categorically excluded under 516 DM 2.3(A)(9) because it is a regulation that is legal and procedural in nature with environmental effects that are too speculative to lend themselves to meaningful analysis and will later be subject to the NEPA process on a case-by-case basis. Although each permit issued under these proposed regulations would be subject to the NEPA process, we expect most if not all

permits we issue to be categorically excluded under 516 DM 8.5(C)(1) because they will cause no environmental disturbance.

*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, the Service did not consult with tribal authorities because this rule will have no effect on federally-recognized Indian tribes.

*Energy Effects—Executive Order 13211.* On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not a significant regulatory action under Executive Order 12866, and it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### *Clarity of This Proposed Rule*

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:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) 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 the **ADDRESSES** section. 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.

#### **Literature Cited**

Arent, Lori, R. 2007. Raptors in Captivity: Guidelines for Care and Management. The Raptor Center, College of Veterinary Medicine at the University of Minnesota, St. Paul, Minnesota.

Buhl, Gail and Lisa Borgia. 2004. Wildlife in Education: A Guide for the

Care and Use of Program Animals. National Wildlife Rehabilitators Association, St. Cloud, Minnesota.

#### **List of Subjects in 50 CFR Part 10**

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

#### **List of Subjects in 50 CFR Part 13**

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

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

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

#### **List of Subjects in 50 CFR Part 22**

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

For the reasons set forth in this preamble, we propose to amend title 50, chapter I, subchapter B of the CFR as follows:

### **PART 10 – GENERAL PROVISIONS**

1. The authority citation for part 10 continues to read as follows:

**Authority:** 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1544; 16 U.S.C. 1361–1384, 1401–1407; 16 U.S.C. 742a–742j-1; 16 U.S.C. 3371–3378.

2. Amend § 10.12 by revising the definition of “Public” as set forth below:

#### **§ 10.12 Definitions.**

\* \* \* \* \*

*Public* as used in referring to museums, zoological parks, and scientific or educational institutions, refers to those that are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit. This definition does not apply to the term “public” as used in migratory bird and eagle permit regulations. With reference to migratory bird and eagle permits, see definitions under § 21.3 and § 22.3 of this subchapter.

\* \* \* \* \*

### **PART 13 – GENERAL PERMIT PROCEDURES**

3. 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.

4. Amend the table in § 13.11(d)(4) as follows:

a. Under the heading “Migratory Bird Treaty Act,” remove the entry for “Migratory Bird Special Purpose/ Education;”

b. Under the heading “Migratory Bird Treaty Act,” add an entry for “Educational Use” immediately following the entry for “Migratory Bird

Rehabilitation” to read as set forth below;

c. Under the heading “Bald and Golden Eagle Protection Act,” remove the entries for “Eagle Scientific Collecting” and “Eagle Exhibition”;

d. Under the heading “Bald and Golden Eagle Protection Act,” add an entry for “Eagle Scientific Purpose” as the first entry to read as set forth below; and

e. Under the heading “Bald and Golden Eagle Protection Act,” add an entry for “Eagle Educational Use” immediately following the entry for “Golden Eagle Nest Take” to read as set forth below.

**§ 13.11 Application procedures.**

- \* \* \* \* \*
- (d) \* \* \*
- (4) *User fees.* \* \* \*

Type of Permit	CFR Citation	Fee	Amendment Fee
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**MIGRATORY BIRD TREATY ACT**

*	*	*	*
Educational Use	50 CFR 21	100	50
*	*	*	*

**BALD AND GOLDEN EAGLE PROTECTION ACT**

Eagle Scientific Purpose	50 CFR 22	100	50
*	*	*	*
Eagle Educational Use	50 CFR 22	100	50
*	*	*	*

\* \* \* \* \*

5. Amend the table in § 13.12(b) as follows:

a. Add one entry in numerical order by section number under “Migratory Bird permits” for “Educational use” to read as follows;

b. Remove the entry for “Scientific or exhibition” under “Eagle permits;”

c. Add two entries in numerical order by section number under “Eagle permits” for “Eagle scientific purpose” and “Eagle educational use” to read as set forth below.

**§13.12 General information requirements on applications for permits.**

\* \* \* \* \*

(b) \* \* \*

Type of permit	Section
*	*
Migratory bird permits:	
*	*
Educational use	21. 32
*	*
Eagle permits:	
Eagle scientific purpose	22.21
*	*

Type of permit	Section
Eagle educational use	22.29
*	*

**PART 21—MIGRATORY BIRD PERMITS**

6. 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.

**Subpart A—INTRODUCTION**

7. Amend § 21.2 by revising paragraph (b) to read as follows:

**§ 21.2 Scope of regulations.**

\* \* \* \* \*

(b) This part, except for § 21.12(a), (b)(3), and (c) (general permit exceptions); § 21.22 (banding or marking); § 21.29 (Federal falconry standards); § 21.31 (rehabilitation); and § 21.32 (educational use), 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.

\* \* \* \* \*

8. Amend § 21.3 by revising the introductory text and adding the

definitions “Nonreleasable bird”, “Open to the general public”, “Public institution”, “Public museum”, and “Public zoological park” in alphabetical order to read as follows:

**§ 21.3 Definitions.**

The following definitions are in addition to those contained in part 10 of this chapter, and, unless the context of a section provides otherwise, apply within this part:

\* \* \* \* \*

*Nonreleasable bird* means a migratory bird that has sustained injuries that will likely prevent it from surviving in the wild even after medical treatment and/or rehabilitation, or a migratory bird that has been imprinted or habituated to human presence and has lost instincts necessary to survive in the wild.

*Open to the general public* means available to the general public and not restricted to any individual or set of individuals, whether or not a fee is charged.

\* \* \* \* \*

*Public institution* means a public museum; public zoological park; or a facility that is open to the general public, provides education through exhibits or regular programs, and is maintained and/or operated by a Federal, State, tribal, or local government agency, such as a State

university, municipal zoo, or county-run nature center.

*Public museum* means a facility accredited by the American Association of Museums that houses collections of objects and artifacts of cultural or scientific interest for purposes of scientific research or public exhibition, and which is open to the general public at least 400 hours per year on a schedule of regular, publicized hours.

*Public zoological park* means a facility that is either accredited or certified as a Related Facility by the Association of Zoos and Aquariums. The facility must contain permanent collections of live animals, and must either be open to the general public on a regular basis at least 400 hours per year, or must conduct at least 12 educational programs each year about ecology and wildlife conservation that are open to the general public.

\* \* \* \* \*

### Subpart B—General Requirements and Exceptions

9. Amend § 21.12 as follows:

a. By revising the introductory text and paragraph (a), the introductory text of paragraph (b), and paragraph (b)(1) as set forth below;

b. By redesignating paragraph (b)(2) as paragraph (b)(3);

c. By adding a new paragraph (b)(2) to read as set forth below; and

d. By adding a new paragraph (e) to read as set forth below.

#### § 21.12 General exceptions to permit requirements.

The following exceptions to the permit requirements of § 21.11 are authorized:

(a) *Law Enforcement personnel of the Department of the Interior (DOI), tribes, and States:* If authorized to enforce the provisions of the Migratory Bird Treaty Act, DOI employees and commissioned law enforcement officers of State agencies (including the District of Columbia, and the territories of the United States) and tribal agencies, may, without a permit, take or otherwise acquire, hold in custody, transport, or dispose of migratory birds (alive or dead, including parts, nests, and eggs) as necessary in performing official duties.

(b) *Employees and agents of Federal, State, tribal, and local agencies:*

(1) Any employee or agent of the Service, any other Federal land management agency, the U.S. Geological Survey, the National Marine Fisheries Service, or a State, tribal, or local natural resource agency, who is designated by his or her agency for such purposes may, in the course of official

duties, take and possess migratory birds from the wild without a permit if such action is necessary to aid sick, injured, or orphaned birds; dispose of dead birds or eggs; or salvage and possess bird specimens, parts, nests, or eggs for scientific purposes. This exemption to salvage migratory birds does not apply to carcasses for which there is reasonable evidence to indicate the bird was killed as the result of criminal activity, including, but not limited to, unauthorized shooting, electrocution, or collision with wind turbines.

(2) Any person on a vessel who provides observer services required by the National Marine Fisheries Service (NMFS) under authority of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*); the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*); the Atlantic Tunas Convention Act of 1975 (ATCA; 16 U.S.C. 971 *et seq.*); the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*); and/or the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and who is either employed by NMFS, employed by a NMFS-approved observer service provider, or certified by NMFS and employed directly by a fishery participant, may, without a permit, possess and transport dead migratory birds or parts found during the performance of their official duties as observers, including the proper disposition of such birds or parts, provided that:

(i) Possession and transportation of such migratory birds or parts is for identification purposes or disposition with the Service or NMFS; and

(ii) The observer submits species samples and identification along with any other required data to the appropriate NMFS observer program.

\* \* \* \* \*

(e) *Public and educational institutions:*

(1) Public institutions, and accredited public and private schools (elementary through postgraduate) may possess nonliving migratory bird specimens, except those of bald eagles and golden eagles, including nonviable eggs, parts, and nests, for scientific or conservation educational purposes without a permit. Employees or agents of such institutions and schools may salvage nonliving migratory bird specimens, except bald eagles and golden eagles, provided the specimens will be used for the conservation education purposes of the institution or school, and provided that:

(i) The institutions and schools dispose of and acquire such specimens, by donation only, to and from one

another; to and from Federal, State, or tribal officials authorized to place such specimens; and to and from holders of valid permits authorizing possession of them.

(ii) The institutions may acquire nonliving migratory bird specimens, except bald eagles and golden eagles, from persons who do not have permits to collect or possess the specimens but who salvaged them. For such one-time salvage activity, the individual will be exempt from the permit requirement for collection and possession, provided the specimen is promptly donated to an exempt or permitted entity for scientific or educational purposes.

(iii) The institutions keep accurate and complete records of all migratory bird specimens in their possession and their source, including the name and address of all donors and transferees, for 5 calendar years following the end of the calendar year covered by the records.

(2) Accredited institutional members of the American Zoo and Aquarium Association do not need a permit to possess live, nonreleasable or captive-bred migratory birds, including captive-bred eggs, for use in education, research, or propagation. Accredited AZA institutions may acquire such birds or eggs from or transfer such birds or eggs to other accredited institutional members of the American Zoo and Aquarium Association (AZA) by donation, sale, purchase, or barter solely for use in education, research, or propagation. Accredited AZA institutions may, by donation only, transfer birds to Federal and State officials authorized to place such birds, or anyone with a valid Federal permit to possess such birds. All birds possessed under this permit exemption must be housed and cared for in accordance with the husbandry requirements set forth in § 21.32(b) of this Subchapter. Nothing in this section authorizes such institutions to take live migratory birds, parts, nests, or eggs from the wild.

(3) Entities that hold live migratory birds and/or nonliving migratory bird specimens and that were previously exempt from the permit requirement before [*insert date 30 days after the date of the final rule's publication in the Federal Register*], and which are no longer exempt may retain any migratory birds, live or dead, already in their possession on [*insert date 30 days after the date of the final rule's publication in the Federal Register*] without a permit. Live birds must be held under the husbandry standards of 21.32(b)(1)(i) through (vii) and 21.32(b)(2). A permit is required to

acquire and possess any additional live migratory bird, including progeny, or migratory bird specimen after that date or to sell or otherwise transfer any lawfully possessed migratory bird without first obtaining a permit under this part.

\* \* \* \* \*

**Subpart C—Specific Permit Provisions**

10. Amend § 21.31 as follows:

a. By revising paragraphs (a), (b)(1)(i), and (e)(1)(v) as set forth below;

b. By adding a new sentence immediately after the first sentence of paragraph (e)(4)(ii) as set forth below; and

c. By adding a new sentence immediately after the first sentence of paragraph (e)(4)(v) to read as set forth below.

**§ 21.31 Rehabilitation permits.**

(a) *What is the permit requirement?* Except as provided in § 21.12, a rehabilitation permit is required to take, possess, or transport a 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) \* \* \*

(1) \* \* \*

(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, and for over 180 days for foster parenting purposes, with authorization from the regional migratory bird permit office.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(v) Birds must be housed only with compatible migratory bird species, and only with other birds held for rehabilitation purposes, except that, for foster parenting purposes, juveniles and orphaned birds may be housed with birds held under another type of permit,

provided that the fostering bird continues to be used according to the purposes and conditions of the permit under which it is held.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \* Prior to transferring a live bird, you must submit a FWS Form 3–202–12 to your migratory bird permit issuing office and receive authorization for the transfer. \* \* \*

\* \* \* \* \*

(v) \* \* \* With such approval, you may retain a nonreleasable bird under your rehabilitation permit on a continuing basis for foster parenting purposes.

\* \* \* \* \*

11. Add a new § 21.32 to subpart C to read as follows:

**§ 21.32 Educational-use permits.**

(a) *Purpose and scope.*

(1) The migratory bird educational-use permit authorizes possession of migratory birds for use in public educational programs and exhibits in which migratory bird conservation, natural history, biology, and/or ecology is a primary component of the program or exhibit. The permit may authorize possession of live nonreleasable or captive-bred birds, nonliving specimens, or both. The permit may also authorize salvage of nonliving migratory bird specimens for educational use.

(2) All live birds you hold under this permit must be nonreleasable or captive-bred individuals of a species your permit authorizes you to possess. You may not possess more birds than is specified on the face of your permit.

(b) *Husbandry requirements for keeping live birds for educational use.*

(1) Caging requirements.

(i) Cages must allow sufficient movement to accommodate feeding, roosting, and maintenance behaviors without harm to the bird or damage to its feathers. The approximate cage size will vary with the size of your bird, whether it is flighted (capable of flying) or nonflighted (incapable of flying), the

number of birds occupying the cage, and the traits of the particular species.

(ii) The design of your caging must take into account the natural history of the species you are housing, as well as the special needs of individual birds.

(iii) The caging must be made of a material that will not entangle or cause injury to the type of bird that will be housed within. The floors must not be abrasive to the birds' feet.

(iv) Cages must be secure and provide protection from predators, domestic animals, undue noise, human disturbance, sun, wind, and inclement weather.

(v) Cages must be well-drained and kept clean.

(vi) You must provide adequate numbers of appropriately-sized perches for birds under your care.

(vii) You may house birds only with nonaggressive individuals of compatible species.

(viii) Cages for all birds except raptors must approximate the dimensions and design recommended by the National Wildlife Rehabilitators Association's *Wildlife in Education: A Guide for the Care and Use of Program Animals* (2004), except for variations that are reasonable and necessary to accommodate particular circumstances and are approved by your regional migratory bird permit office based on a showing by you that the variance will not adversely affect migratory birds.

(ix) Cages for raptors must approximate the dimensions and design recommended by the University of Minnesota Raptor Center's *Raptors in Captivity: Guidelines for Care and Management* (2007), except for variations that are reasonable and necessary to accommodate particular circumstances, and are approved by the regional migratory bird permit office based on a showing by you that the variance will not adversely affect migratory birds.

(x) Recommended cage dimensions for program raptors are shown in the following table:

Species		Length feet (meters)	Width feet (meters)	Height feet (meters)
Sharp-shinned hawk	Fully flighted	5 (1.5)	5 (1.5)	7 (2.1)
American kestrel	Nonflighted or tethered	3 (0.9)	3 (0.9)	3 (0.9)
Merlin				
Boreal owl				
Burrowing owl				
Eastern screech owl				
Northern saw-whet owl				
Pygmy owl				
Western screech owl				

Species		Length feet (meters)	Width feet (meters)	Height feet (meters)
Cooper's hawk Northern goshawk Northern harrier	Fully flighted or display only Nonflighted or tethered	14 (4.3) 6 (1.8)	6 (1.8) 6 (1.8)	7 (2.1) 7 (2.1)
Broad-winged hawk Mississippi kite Peregrine falcon Prairie falcon Common barn owl Long-eared owl Short-eared owl	Fully flighted Nonflighted or tethered	10 (3.0) 6 (1.8)	8 (2.4) 6 (1.8)	7 (2.1) 7 (2.1)
Ferruginous hawk Harris's hawk Red-shouldered hawk Red-tailed hawk Rough-legged hawk Swainson's hawk Swallow-tailed kite Crested caracara Barred owl Great grey owl Great horned owl Snowy owl	Fully flighted Nonflighted or tethered	12 (3.6) 8 (2.4)	8 (2.4) 8 (2.4)	7 (2.1) 7 (2.1)
Osprey Bald Eagle Golden Eagle Black vulture Turkey vulture	Fully flighted (display only) Nonflighted, tethered, or fully flighted free-lofted program bird	40 (12.2) 12 (3.6)	10 (3.0) 10 (3.0)	9 (2.7) 9 (2.7)

(xi) If your facilities have already been approved by the Service on the basis of photographs and diagrams, and authorized under a § 21.27 Special Purpose-Education permit or § 22.21 Eagle Exhibition permit, then they are 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 hold).

(2) Dietary requirements. You must feed birds held under this permit a diet that imitates its natural diet as closely as possible. This requirement includes providing the type, as well as the variety, of foods they are likely to naturally consume in the wild. We will use the dietary recommendations provided in the publications designated in paragraphs (b)(1)(viii) and (b)(1)(ix) of this section to evaluate whether birds are fed appropriately.

(c) *What additional conditions apply to educational use permits?* In addition to the husbandry requirements of paragraph (b) of this section and the conditions set forth in part 13 of this subchapter, which govern permit renewal, amendment, transfer, suspension, revocation, and other procedures and requirements for all

permits issued by the Service, your authorization is subject to the following additional conditions:

(1) You must present a minimum of 12 programs that are open to the general public each year with each bird or specimen held under the permit; or if your facility is open to the public and the birds and/or specimens are displayed, but not used in programs, your facility must be open to the public at least 400 hours per year according to a regular, publicized schedule. Live birds that have become unsuitable for educational use due to age or infirmity may be exempted from the 12-program requirement with authorization from the migratory bird permit issuing office.

(2) All live birds held under this permit must be nonreleasable or captive-bred.

(3) You may transfer birds and specimens to other permittees authorized to receive them and acquire birds and specimens from permittees authorized to possess and transfer them, provided the number and species of birds held by each permittee are consistent with the authorizations provided by his or her permit, and the transfer is in accordance with the following conditions:

(i) Prior to acquiring or transferring a live bird, you must submit a FWS Form 3-202-12 to your migratory bird permit

issuing office and receive authorization for the transfer.

(ii) You may transfer live birds and nonliving specimens held under your permit only by donation, except that you may purchase and sell the following categories of live birds: captive-bred migratory raptors marked with a seamless metal band provided by the Service; captive-bred waterfowl marked in accordance with 50 CFR 21.13(b); and captive-bred game birds marked in accordance with 50 CFR 21.13(b). You are authorized to sell, purchase, or barter such birds to and from other permittees who are authorized to purchase, sell or barter them.

(iii) You may acquire nonliving migratory bird specimens, except eagles, from and transfer such specimens to exempt public institutions and accredited schools, by donation only. Transfer of live eagles and nonliving eagle specimens must be in accordance with the provisions of 50 CFR 22.29.

(4) You may not propagate birds held under this permit.

(5) You may not acquire or possess any bird that has sustained injuries requiring amputation of a wing at the elbow (humero-ulnar joint) or above, a leg or a foot, and/or is blind, unless:

(i) A licensed veterinarian submits a written 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

(ii) The issuing office specifically authorizes you to possess the bird for educational use.

(6) You must report the death or escape of any bird to your migratory bird permit issuing office within 5 business days by submitting a completed FWS Form 3-202-12.

(7) You may not release any live, captive-bred bird to the wild.

(8) You may donate the carcass or individual parts and feathers of a bird that dies to persons authorized by permit or regulation to possess them or, if your permit authorizes possession of nonliving specimens, you may retain them for educational purposes. Specimens not retained by you or donated must be promptly incinerated or buried.

(9) You may retain molted feathers needed for imping purposes. If your permit authorizes possession of nonliving specimens, you may retain additional molted feathers for educational and scientific use, except for bald and golden eagle feathers (see 50 CFR 22.29). Except for eagle feathers, you may donate molted feathers to persons authorized by permit or regulation to possess such items without authorization from the Service.

(10) You may allow photography, filming, or other such uses of the birds held under your permit for the purpose of providing public education about migratory bird conservation, biology, or ecology. You may not exhibit the birds held under this permit in any manner that implies personal use or promotion or endorsement of any product, merchandise, goods, services, business, or organization except your own educational activities.

(11) Whenever you exhibit the birds held under this permit, you must include either a written or verbal statement that your possession and exhibition of the bird is by permission of the U.S. Fish and Wildlife Service.

(12) Your subpermittees must be at least 18 years of age and be designated

as subpermittees in your records. All staff or volunteers who handle the birds held under your permit must be subpermittees, or must be directly supervised by you or a subpermittee when handling the bird(s). You are legally responsible for ensuring that your subpermittees, staff, and volunteers adhere to the terms of your permit.

(13) Suitable birds held under this permit may be used for foster parenting of birds held under a rehabilitation permit, as long as the fostering birds continue to be used for the required 12 programs per year.

(14) If your permit authorizes salvage, you may salvage and possess carcasses, feathers, and parts, unoccupied nests, and nonviable eggs of migratory birds, except for bald eagles and golden eagles.

(i) You may not salvage, and should immediately report to U.S. Fish and Wildlife Service Law Enforcement, any live or dead birds that appear to have been poisoned, shot, or injured as the result of criminal activity.

(ii) You may not salvage specimens on lands managed by Federal, State, tribal or local agencies without prior written authorization from the applicable agency, unless the agency's policies or regulations allow salvage of specimens.

(iii) You may not salvage specimens on private property without prior written permission or permits from the landowner or the landowner's custodian.

(iv) If you encounter a bird with a Federal band issued by the U.S. Geological Survey, Bird Banding Laboratory, report the band number to 1-800-327-BAND or [www.reportband.gov](http://www.reportband.gov).

(15) You must maintain records of live birds and nonliving specimens in your possession; the dates you acquired, transferred, or disposed of them; the programs in which they were used or, if the birds are displayed in their daily enclosures, the days your facility was open to the public.

(16) You must submit an annual report for the preceding calendar year to your migratory bird permit issuing office by the date required on your permit. You may complete FWS Form

3-202-5 or a report from a database you maintain, provided your report contains all, and only, the information required by FWS Form 3-202-5.

(17) Acceptance of this permit authorizes inspection of your records and facilities in accordance with 50 CFR 13.47.

(d) *Application procedures.* Apply for a migratory bird educational-use permit to the appropriate Regional Director – Attention Migratory Bird Permit Office. You can find addresses for the appropriate Regional Director in § 2.2 of subchapter A of this chapter. Your application package must consist of the following:

(1) A completed application, including any required attachments. Use FWS Form 3-200-10c for live birds of species other than eagles, FWS Form 3-200-10d for nonliving specimens of species other than eagles, and FWS Form 3-200-14 for eagles and eagle specimens.

(2) A check or money order made payable to the “U. S. Fish and Wildlife Service” in the amount of the application fee listed on the application form and in § 13.11 of this chapter.

(e) *Issuance criteria.*

(1) For possession of nonliving migratory bird specimens, we may issue a permit to you if your presentations or facilities will be open to the public and include, as a primary component, education about migratory bird conservation, natural history, biology, and/or ecology.

(2) For possession of live migratory birds, we will consider the criteria in paragraph (e)(1) and whether you have adequate experience caring for and working with migratory birds and adequate facilities for them.

(i) In evaluating an applicant's experience handling raptors and corvids, the Service will use the criteria in the following table as guidance. Although hands-on experience with the species for which the applicant is applying is most valuable, hands-on experience with any species in a category will help qualify an applicant or permittee for other species in that category.

Species	Static Display	On-the-Glove	Flight Demonstration
<b>Category 1</b> Harris's hawk American kestrel Eastern screech owl Northern saw-whet owl Western screech owl	100 hours over at least 1 year, including husbandry and a minimum of 20 hours of conducting educational programs.	140 hours over at least 1 year, including husbandry and a minimum of 40 hours conducting educational programs on the glove.	300 hours over at least 1 year, including husbandry and a minimum of 80 hours of educational programs and 50 hours of free-flying under supervision of an experienced permittee.

Species	Static Display	On-the-Glove	Flight Demonstration
<b>Category 2</b> Broad-winged hawk Mississippi kite Red-shouldered hawk Red-tailed hawk Rough-legged hawk Swallow-tailed kite Barred owl Boreal owl Burrowing owl Common barn owl Great horned owl Corvids	160 hours over at least 1 year, including husbandry and a minimum of 40 hours of conducting educational programs. At least half the time requirement should be with birds in this category.	200 hours over at least 1 year, including husbandry and a minimum educational programs of 60 hours conducting on the glove. At least half the timerequirement should be with birds in this category.	500 hours over at least 1 year, including husbandry and a minimum of 100 hours of educational programs and 50 hours of free-flying under supervision of an experienced permittee. At least half the time requirement should be with birds in this category.
<b>Category 3</b> Northern harrier Swainson's hawk Merlin Peregrine falcon Prairie falcon Great grey owl Long-eared owl Pygmy owl Short-eared owl Black vulture Turkey vulture	200 hours over at least 1 year, including husbandry and a minimum of 60 hours of conducting educational programs. At least half the timerequirement should be with birds in this category.	240 hours over at least 1 year, including husbandry and a minimum of 80 hours conducting educational programs on the glove. At least half the time requirement should be with birds in this category.	700 hours over at least 2 years, including husbandry and a minimum of 160 hours of educational programs (80 with birds in programs this category), and 50 hours of free-flying birds in this category under supervision of an experienced permittee.
<b>Category 4</b> Osprey Bald eagle Cooper's hawk Ferruginous hawk Golden eagle Northern goshawk Sharp-shinned hawk Crested caracara Snowy owl	300 hours over at least 1 year, including husbandry and a minimum of 80 hours of conducting educational programs. At least half the time requirement should be with the particular species.	500 hours over at least 1 year, including husbandry and a minimum of 100 hours conducting educational programs on the glove. At least half the time requirement must be with the particular species.	1000 hours over at least 2 years, including husbandry and a minimum of 200 hours of educational programs (100 hours with birds in this category), and 50 hours of free-flying the particular species under the supervision of an experienced permittee.

(ii) For applications to possess migratory birds other than raptors and corvids for static display, we will evaluate your experience based on the Static Display criteria for Category 1 in the table in paragraph (e)(2)(i) of this section. For applications to use such birds for program use, we will use the recommendations of National Wildlife Rehabilitators Association's *Wildlife in Education: A Guide for the Care and Use of Program Animals* (2004) to determine the suitability of the species for educational program use and the level of experience required.

(iii) Your facilities must properly house the species of migratory birds that you are applying to hold. Enclosure dimensions and design must meet the husbandry standards set forth in paragraph (b)(1) of this section.

(iv) We will determine the migratory bird species and the number of birds you are authorized to hold under your permit, based on your experience, facilities, and the nature of the educational programs you intend to present.

(f) *State and tribal authorization.* If your State or tribe requires a license or permit to hold migratory birds for

education, your Federal permit is not valid unless you possess and adhere to the terms of the State, tribal, or territorial authorization.

(g) *Permit tenure.* The tenure of each educational use permit is specified on the face of the permit, and in no case will be longer than 5 years.

**PART 22 - EAGLE PERMITS**

12. 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.

13. Amend § 22.2 by revising the section heading and paragraph (a)(2) to read as follows:

**§ 22.2 To what activities does this part apply?**

(a) \* \* \*

(2) You may not transport into or out of the United States, import, export, purchase, sell, trade, barter, or offer for purchase, sale, trade, or barter bald eagles or golden eagles, or their parts, nests, or eggs of these lawfully-acquired pre-act birds. However, you may transport into or out of the United States any lawfully acquired, nonliving bald

eagle or golden eagle specimens if you acquire a permit issued under §§ 22.21, 22.22, or 22.29 of this part and obtain the CITES export authorization through the procedures set forth under §§ 22.21, 22.22, and 22.29.

\* \* \* \* \*

14. Amend § 22.3 by revising the section heading and the introductory text and by adding the definitions "Nonreleasable eagle", "Open to the general public", "Public museum", "Public scientific society", and "Public zoological park" in alphabetical order to read as follows:

**§ 22.3 What definitions do you need to know?**

The following definitions are in addition to those contained in part 10 of this chapter, and, unless the context of a section provides otherwise, are used for purposes of this part.

\* \* \* \* \*

*Nonreleasable eagle* means a bald or golden eagle that has sustained injuries that will likely prevent it from surviving in the wild even after medical treatment and/or rehabilitation, or a bald or golden eagle that has been imprinted or habituated to human presence and has

lost instincts necessary to survive in the wild.

*Open to the general public* means available to the general public and not restricted to any individual or set of individuals, whether or not a fee is charged.

\* \* \* \* \*

*Public museum* means a facility accredited by the American Association of Museums that houses collections of objects and artifacts of cultural or scientific interest for scientific research or public exhibition, and which is open to the general public at least 400 hours per year on a schedule of regular, publicized hours.

*Public scientific society* means an entity that conducts research in the field of wildlife conservation, ecology, ornithology, or other natural science, and makes the findings of such research available to the public; or promotes public knowledge about science, biology, ecology, and/or wildlife conservation and either is open to the general public on a regular basis at least 400 hours per year or conducts at least 12 educational programs per year that are open to the general public.

*Public zoological park* means a facility that is either accredited or certified as a Related Facility by the Association of Zoos and Aquariums. The facility must contain permanent collections of live animals, and must either be open to the general public on a regular basis at least 400 hours per year, or must conduct at least 12 educational programs each year about ecology and wildlife conservation that are open to the general public.

\* \* \* \* \*

### Subpart C – Eagle Permits

15. Revise § 22.21 to read as follows:

#### § 22.21 What are the requirements concerning scientific-purpose permits?

We may, under the provisions of this section, issue a permit authorizing the taking, possession, transportation within the United States, or transportation into or out of the United States of lawfully possessed bald eagles or golden eagles, or their parts, nests, or eggs for the scientific purposes of public museums, public scientific societies, or public zoological parks. We will not issue a permit under this section that authorizes the transportation into or out of the United States of any live bald or golden eagles, or any viable eggs of these birds.

(a) *How do I apply if I want a permit for scientific purposes?* (1) You must submit applications for permits to take, possess, or transport within the United States lawfully acquired live or dead

bald or golden eagles, or their parts, nests, or eggs for scientific purposes to the appropriate Regional Director – Attention: Migratory Bird Permit Office. You can find addresses for the Regional Directors in 50 CFR 2.2.

(2) If you want a permit to transport into or out of the United States any lawfully acquired dead bald or golden eagles or their parts, nests, or nonviable eggs for scientific purposes, you must submit your application to the Division of Management Authority. Your application must contain all the information necessary for the issuance of a CITES permit. You must also comply with all the requirements in part 23 of this subchapter before international travel. Mail should be addressed to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 212, Arlington, VA, 22203-1610.

(3) Your application for any permit under this section must also contain the information required under this section, § 13.12(a) of this subchapter, and the following information:

(i) Species of eagle and number of such birds, nests, or eggs proposed to be taken, possessed, or transported;

(ii) Specific locality in which taking is proposed, if any;

(iii) Method of taking proposed, if any;

(iv) If not taken, the source of eagles and other circumstances surrounding the proposed acquisition or transportation;

(v) Name and address of the public museum, public scientific societies, or public zoological park for which they are intended; and

(vi) Complete explanation and justification of request, nature of project or study, and other appropriate explanations.

(b) *What are the conditions?* In addition to the general conditions in part 13 of this subchapter B, permits to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests, or eggs for scientific purposes, are also subject to the following condition: In addition to any reporting requirement specifically noted in the permit, you must submit a report of activities conducted under the permit to the Regional Director - Attention: Migratory Bird Permit Office, within 30 days after the permit expires.

(c) *How do we evaluate your application for a permit?* We will conduct an investigation and will issue a permit to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests, or

eggs for scientific purposes only when we determine that the taking, possession, or transportation is compatible with the preservation of the bald eagle and golden eagle. In making this determination, we will consider, among other criteria, the following:

(1) The direct or indirect effect that issuing such permit would be likely to have upon the wild populations of bald and golden eagles;

(2) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;

(3) Whether the justification of the purpose for which the permit is being requested is adequate to justify the removal of the eagle from the wild or otherwise change its status; and

(4) Whether the applicant has demonstrated that the permit is being requested for *bona fide* scientific purposes of a public museum, public scientific society, or public zoological park.

(d) *Tenure of permits.* The tenure of permits to take bald or golden eagles for scientific purposes will be that shown on the face of the permit.

16. Add a new § 22.29 to subpart C to read as follows:

#### § 22.29 Permits for possession and educational use of eagles.

(a) *Purpose and scope.* The eagle educational-use permit authorizes possession of nonreleasable bald eagles and/or golden eagles for use in public educational programs and exhibits in which eagle conservation, natural history, biology, or ecology is a primary component of the program or exhibit.

(b) *Conditions and provisions.* Except as provided in this part and in § 21.32 of this subchapter (migratory bird educational-use permits), all of the provisions of § 21.32 apply to eagle educational-use permits.

(1) We may issue eagle educational-use permits only to public museums, public scientific societies, and public zoological parks. Permittees must either have facilities that are open to the general public according to a schedule of regular, publicized hours amounting to at least 400 hours per year, or must conduct at least 12 educational programs per year that are open to the general public or presented at an accredited school.

(2) You may not allow physical contact between a live eagle held under this permit and the public.

(3) Live eagles possessed under this permit must be nonreleasable.

(4) Except for specimens that are in poor condition or are otherwise deemed

unacceptable for distribution by the National Eagle Repository, or those that the National Eagle Repository does not typically distribute to Native Americans for religious ceremonial purposes (such as some skeletal parts), all nonliving eagle specimens possessed under this permit must have been lawfully acquired before March 30, 1994. The Regional Director for the Region where the applicant resides may authorize exceptions on a case-by-case basis for important resource needs with compelling justification.

(5) Prior to acquiring or transferring any eagle or specimen thereof, you must submit a FWS Form 3-202-12 to your migratory bird permit issuing office and receive authorization from the office for the transfer.

(6) To transport nonliving eagle specimens out of or into the United States for educational purposes, you must submit your application for a transport permit to the Division of Management Authority. Your application must contain all the information necessary for the issuance of a CITES permit. You must also comply with all the requirements in part 23 of this subchapter before undertaking international travel. Mail should be addressed to the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203-1610.

(i) Eagle specimens may be transported out of or into the United States on a temporary basis only. You must return the permitted specimens to the originating country within the timeframe specified on the face of the permit, not to exceed 3 years.

(ii) We will not issue a permit under this section that authorizes the transportation out of or into the United States of any live bald eagle or golden eagle or viable egg of these species.

(7) You must send all bald eagle and golden eagle carcasses of eagles that die in your possession, and all molted eagle primary and secondary feathers and retrices (tail feathers) not needed for imping (replacing a damaged feather with a molted feather) to the U. S. Fish and Wildlife Service, National Eagle Repository, Building 128, Rocky Mountain Arsenal, Commerce City, CO 80022. You can contact the Repository at 303-287-2110.

(8) You must submit an annual report for the preceding calendar year to your migratory bird permit issuing office by the date specified on your permit. You may complete FWS Form 3-202-13 or a report from a database you maintain, provided your report contains all, and

only, the information required by FWS Form 3-202-13.

Dated: July 1, 2010.

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0067; 92220-1113-0000-C5]

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Reclassify the U.S. Breeding Population of Wood Storks From Endangered to Threatened**

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the United States (U.S.) breeding population of the wood stork (*Mycteria americana*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that reclassifying the U.S. breeding population of the wood stork to threatened may be warranted. Therefore, with the publication of this notice, we are initiating a review of the species' status to determine if reclassification is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the U.S. breeding population of this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before November 22, 2010. After this date, you must submit information directly to the Jacksonville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is

Eastern Standard Time on this date. We may not be able to address or incorporate information that we receive after this date.

**ADDRESSES:** You may submit information by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. In the Keyword box, enter Docket No FWS-R4-ES-2010-0067, which is the docket number for this action. Then, in the Search panel on the left side of the screen under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Send a Comment or Submission."

- **By hard copy:** Submit by U.S. mail or hand-delivery to: Public Comments Processing, *Attn:* FWS-R4-ES-2010-0067; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:** David L. Hankla, Field Supervisor, Jacksonville Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256, by telephone (904) 731-3336, or by facsimile (904) 731-3045. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Information**

When we make a finding that a petition presents substantial information indicating that reclassifying a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the status of the U.S. breeding population of the wood stork and other populations of wood storks breeding in Central and South America. We seek information on:

(1) The historical and current status and distribution of the wood stork, its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) The five factors that are the basis for making a listing/delisting/