

eagles held for falconry are golden eagles, and most were removed from the wild due to livestock depredation. Most eagles held for exhibition/education and Native American aviaries are nonreleasable bald eagles and golden eagles obtained from permitted rehabilitators. We are assessing whether captive-bred eagles should be available for these or other purposes. We solicit comments and suggestions on all aspects of bald eagle and golden eagle propagation and potential regulations to govern Federal permitting of this activity.

We particularly solicit comments on the topics listed below. Explaining your reasons and rationale for your comments will help as we consider them.

(1) Whether to allow propagation of bald eagles and golden eagles under raptor propagation permits.

(2) Qualifications and experience necessary to propagate eagles.

(3) Limits or restrictions that should apply to propagation of eagles.

(4) Special restrictions that should apply with regard to imprinting.

(5) Whether propagators should be allowed to hybridize bald eagles and golden eagles with other species of eagles.

(6) Restrictions on purposes for which captive-bred eagles may be held.

(7) Qualifications and experience necessary to possess a captive-bred bald eagle or golden eagle.

(8) Special facilities requirements for propagation of golden eagles and bald eagles.

(9) Report information that should be required from a permit holder, if any.

(10) Other conditions that should apply to these permits.

Dated: June 27, 2011.

**Rachel Jacobson,**

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

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 21

[Docket Number FWS-R9-MB-2009-0045; 91200-1231-9BPP]

RIN 1018-AW75

#### Migratory Bird Permits; Abatement Regulations

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We are considering promulgating migratory bird permit regulations for a permit to use raptors (birds of prey) in abatement activities. Abatement means the use of trained raptors to flush, scare (haze), or take birds or other wildlife to mitigate damage or other problems, including risks to human health and safety. We have permitted this activity under special purpose permits since 2007 pursuant to a migratory bird permit policy memorandum. We now intend to prepare a specific permit regulation to authorize this activity. We seek information and suggestions from the public to help us formulate any proposed regulation.

**DATES:** We must receive any comments or suggestions by October 4, 2011.

**ADDRESSES:** You may only submit comments or suggestions by the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. We will not post duplicate comments from any entity, nor will they be put into our administrative record for this issue.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attention FWS-R9-MB-2009-0045; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. 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:** Susan Lawrence at 703-358-2016.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments

We request comments and suggestions on this topic from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties. You may submit your comments and materials concerning this issue by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes

personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we use in preparing a proposed rule, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

In response to public interest in the use of trained raptors to haze (scare) depredating and other problem birds from airports and agricultural crops, we drafted policy to establish a migratory bird abatement permit. On January 12, 2007, we published a **Federal Register** notice (72 FR 1556-1557) containing draft permit conditions for abatement permits for public comment. On December 10, 2007, we published a **Federal Register** notice (72 FR 69705-69706) announcing final permit conditions. This was 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_Activities_Using_Raptors.pdf).

The policy memorandum and conditions govern current administration of Federal Migratory Bird Special Purpose Abatement permits (Federal abatement permit). Applicants for a Federal abatement permit complete and submit Service application form 3-200-79 (<http://www.fws.gov/forms/3-200-79.pdf>) to their Regional Migratory Bird Permit Office. The permit provides the public with a nonlethal management tool to mitigate problems caused by birds and other wildlife. The use of raptors in abatement continues to expand, and we intend to develop a specific permit regulation to govern the activity, rather than continue to administer the permits under Special Purpose permit authority (50 CFR 21.27) and Migratory Bird Permit Memorandum Number 5.

A Federal abatement permit authorizes the use of trained raptors protected under the Migratory Bird Treaty Act (MBTA) to abate problems caused by migratory birds or other wildlife. Under the current policy, an individual must be a Master Falconer in good standing under the Federal falconry regulations (50 CFR 21.29) to

qualify for an abatement permit. A General or Apprentice Falconer may conduct abatement activities under the permit holder's Federal abatement permit if the permit holder designates them as a subpermittee. Only raptors that belong to the abatement permit holder may be used under his or her abatement permit.

Raptors used under a Federal abatement permit must be captive-bred and banded with a Service-issued seamless band. Any MBTA-protected raptor species (including legally held threatened or endangered species) may be used for abatement, except for golden eagles and bald eagles. There is currently no limit to the number of raptors an abatement permit holder may hold under a Federal abatement permit provided that they are properly cared for and each raptor is used for abatement activities. Facilities and equipment must meet standards described in 50 CFR 21.29.

A Federal abatement permit holder may use captive-bred raptors held under his or her migratory bird master falconry permit for abatement activities without transferring them to his or her abatement permit, provided the applicable State falconry permitting authority allows this. The falconry bird used must be a species authorized for use per the conditions of the Federal abatement permit. Only the permit holder may use his or her falconry birds for abatement activities. Raptors held under a Federal abatement permit may not be used for falconry unless they are transferred to a falconry permit.

Abatement permit holders must submit a completed 3-186A form (Migratory Bird Acquisition and Disposition Report) to the issuing Migratory Bird Permit Office for each raptor he or she acquires or disposes of under the permit, but they have no other reporting requirements. Among other things, we solicit suggestions as to whether reporting will have value, and what level of reporting should be required.

A Federal abatement permit, by itself, does not authorize the general killing, injuring, or take of migratory birds or other wildlife. Any take of protected migratory birds by an abatement permit holder must be authorized by a Federal depredation order or depredation permit. Any harassment, disturbance, or take of bald eagles, golden eagles, or endangered or threatened species by an abatement permit holder must be authorized by the applicable Federal permit. Abatement activities must also be in accordance with any other applicable Federal, State, or Tribal law.

However, no additional Federal permit is required to take species that are not protected under the MBTA or any other applicable Federal law. In addition, no Federal permit is required to conduct abatement activities directed at protected migratory birds that do not amount to a take. We do not consider flushing, scaring, or hazing to meet the definition of take under the MBTA.

Possession and use for abatement of exotic raptor species that are not on the list of MBTA-protected species at 50 CFR 10.13, such as Barbary falcon, Lanner falcon, and Saker falcon, is not regulated under the MBTA and is outside the scope of this notice. Hybrid raptors of MBTA-protected species would still be subject to this proposed permit regulation. Though an abatement permit would not be required for use of such species in abatement activities, any resulting take of protected migratory birds or other protected wildlife must still be authorized under the applicable Federal, State, or Tribal law or regulation.

A Federal abatement permit will allow the permittee to conduct abatement at the locations identified and under the conditions listed on his or her abatement permit. A State abatement permit also may be required of an abatement practitioner.

We solicit comments and suggestions on any aspect of the use of trained MBTA-protected raptors for abatement activities and potential regulations to govern Federal permitting. We particularly solicit comments on the topics listed below. Explaining the reasons and rationale for your comments where appropriate will help as we consider them in the preparation of a proposed rule.

(1) Qualifications and experience necessary to qualify for a Federal abatement permit.

(2) Limits on the species that should be authorized for use in abatement activities.

(3) Limits on the numbers of raptors that should be authorized for use in abatement activities.

(4) Qualifications and experience of subpermittees (both those authorized to fly the permit holder's raptors and those allowed to care for birds).

(5) Caging requirements for birds, while traveling, being transported and held in "temporary" caging for extended periods of time, i.e., multiple birds held in a trailer while conducting seasonal abatement activities at multiple locations.

(6) The use of falconry birds held by subpermittees for abatement.

(7) Any other considerations relating to subpermittees conducting abatement

activities under a permit holder's permit, including their business relationship to the permit holder. For example, should falconers located elsewhere in the United States be allowed to conduct abatement activities in their own locale as subpermittees under a permit holder's abatement permit? Why or why not?

(8) Comments on what has worked well under existing permits and what has not worked well.

(9) Report information that should be required from a permit holder, if any.

(10) Other conditions that should apply to these permits.

(11) Examples of situations where raptors are used for abatement and information or documentation of success or lack of success in accomplishing abatement objectives.

**Authority:** The authorities for this notice are the Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703-712); Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106-108, 113 Stat. 1491, and Note Following 16 U.S.C. 703.

Dated: June 27, 2011.

**Rachel Jacobson,**  
*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100903433-1349-01]

RIN 0648-BA22

#### Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Amendment 3

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

**ACTION:** Proposed rule; request for comments.

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**SUMMARY:** NMFS proposes regulations to implement Amendment 3 to the Atlantic Deep-Sea Red Crab Fishery Management Plan (Red Crab FMP). The New England Fishery Management Council (Council) developed Amendment 3 to bring the Red Crab FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Although