

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2001–D002 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D002.

At the end of the comment period, interested parties may view public comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy, (703) 602–1302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DFARS Subpart 235.70 contains streamlined procedures for acquiring research and development using a standard solicitation and contract format. The standard format is available on the research and development streamlined solicitation (RDSS) website at <http://www/rdss.osd.mil>. DFARS 235.7003–2 presently requires that each solicitation issued in the standard format be posted at the RDSS website. This proposed rule eliminates the requirement for contracting activities to post their solicitations at the RDSS website, to permit each activity to use its own procedures for electronic posting of solicitations. However, contracting activities will continue to make synopses and solicitations available through the Governmentwide point of entry (FedBizOpps) in accordance with FAR 5.102 and 5.203.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not significantly change solicitation procedures or limit public access to solicitation information. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will

consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D002.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 235**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR part 235 as follows:

1. The authority citation for 48 CFR part 235 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 235—RESEARCH AND DEVELOPMENT CONTRACTING**

2. Section 235.7003–2 is revised to read as follows:

**235.7003–2 RDSS process.**

(a) *Synopsis.* The synopsis required by FAR 5.203 must include—

(1) The information required by FAR 5.207; and

(2) A statement that the solicitation will be issued in the research and development streamlined solicitation format shown at the RDSS/C website.

(b) *Solicitation.*

(1) The solicitation, to be made available consistent with the requirements of FAR 5.102—

(i) Must be in the format shown at the RDSS/C website;

(ii) Must include the applicable version number of the RDSS standard format; and

(iii) Must incorporate by reference the appropriate terms and conditions of the RDSS standard format.

(2) To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

[FR Doc. 01–30261 Filed 12–5–01; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 17 and 21**

**RIN 1018–AH87**

**Migratory Bird Permits; Regulations Governing Rehabilitation Activities and Permit Exceptions**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation would create a permit category to specifically authorize rehabilitation activities involving migratory birds. Migratory bird rehabilitation is the practice of caring for sick, injured, or orphaned migratory birds with the goal of releasing them back to the wild. Currently, in the absence of a permit specifically for this purpose, migratory bird rehabilitation activities are authorized by issuance of a special purpose permit under 50 CFR 21.27. In addition, this proposed regulation would create a permit exception for public officials responsible for tracking infectious diseases.

**DATES:** You should submit written comments by March 6, 2002, to the address below.

**ADDRESSES:** You may mail or deliver written comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610. Please reference “RIN 1018–AH87” at the top of your letter. Alternatively, you may submit your comments via the Internet to: [migbird\\_rehab@fws.gov](mailto:migbird_rehab@fws.gov). Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation that we have received your message, contact us directly at 703/358–1714.

The complete file for this proposed rule is available for inspection, by appointment, during normal business hours at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Jon Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 703 / 358–1714.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) prohibits possession

of any bird protected by treaties between the U.S. and Canada, Mexico, Japan, and Russia. Birds covered by the Act are referred to as "migratory birds." Presently, if you wish to provide treatment to sick, injured, or orphaned migratory birds, you must obtain a special purpose permit from the U.S. Fish and Wildlife Service under 50 CFR 21.27. The special purpose permit category is used to authorize activities not specifically covered by other existing types of permits. In order to more effectively promote rehabilitation and conservation of migratory birds, and to facilitate the activities of rehabilitators nationwide by providing them with a reliable, consistent regulatory framework, we are proposing this rule to create a new permit category specifically authorizing rehabilitation of migratory birds.

Currently, approximately 2,500 special purpose permits for migratory bird rehabilitation purposes are active nationwide, representing almost half the approximately 5,500 currently active special purpose permits. Because the special purpose permit can cover numerous types of activities, the framework for issuing these permits is necessarily broad and general. The Service has addressed this generality by issuing standard conditions with which holders of special purpose permits for rehabilitation must conform. This proposed rehabilitation permit regulation largely incorporates—and expands upon—those existing standard conditions.

The impetus behind creating a rehabilitation permit category is threefold: to codify permit conditions through the public rulemaking process; to clarify what is expected from migratory bird rehabilitators by providing more specificity and detail to permit requirements; and to bring greater consistency nationwide to the regulation of migratory bird rehabilitation.

This proposed rule addresses rehabilitation of threatened and endangered migratory bird species, and amends 50 CFR 17 (Endangered and Threatened Wildlife), to exempt persons who obtain a rehabilitation permit from having to obtain a permit under part 17. The rule was written with the premise that migratory bird rehabilitators should not be required to obtain two separate permits when there is always some possibility that they may be presented with a sick or injured, endangered or threatened migratory bird species. Accordingly, the rule contains numerous provisions addressing rehabilitation of threatened and endangered migratory bird species,

including additional requirements to notify and coordinate with the Service. Some rehabilitators may not be authorized to care for threatened and endangered species. Individual permits may be further conditioned at the time of issuance to specify which categories of migratory bird species the permittee is authorized to rehabilitate.

The proposed rule also provides an exemption to the permit requirements of 50 CFR part 17 and 50 CFR part 21 for vets who treat listed migratory bird species, under certain conditions.

In conjunction with an ongoing review of all U.S. Fish and Wildlife Service permit fee schedules, the Division of Migratory Bird Management is reviewing and revising migratory bird permit application processing fees. Currently, applicants for Special Purpose—Rehabilitation permits do not pay a processing fee. This proposed rule would require rehabilitation permit applicants to pay the permit application fee listed in 50 CFR 13.11.

#### **Permit Exception for Authorities Tracking Infectious Disease**

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

#### *Endangered Species Act Consideration*

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), requires all Federal agencies to "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [critical] habitat." This proposed rule is currently being reviewed pursuant to section 7 of the ESA. Section 7 consultation on this rule will be concluded before this rule is finalized. Individual decisions to issue rehabilitation permits to cover species that are listed as endangered or

threatened will require consultation pursuant to section 7 of the ESA.

#### *Required Determinations*

Responsibilities of Federal Agencies To Protect Migratory Birds (Executive Order 13186)

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

Regulatory Planning and Review (Executive Order 12866)

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

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

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

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

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

#### Regulatory Flexibility Act

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

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. This proposed rule requires applicants for migratory bird

rehabilitation permits to pay the fee listed in the Service permit application fee schedule at 50 CFR 13.11. Currently, the Service waives fees for rehabilitation permit applicants, although the fee schedule is being revised as part of a separate proposed rule revising part 13. We will consider and address the economic effects of proposed fee revisions as part of that rulemaking. Because permit application fees will be addressed in another proposed rule, we certify that this action will not have a significant economic impact on a substantial number of small entities. A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

#### Unfunded Mandates Reform Act

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

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

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

#### Takings

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

#### Federalism

In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule does not have significant Federalism effects. A Federalism assessment is not required. 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 direct 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. The Department of the Interior has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

#### Paperwork Reduction Act

This 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. Information collection associated with migratory bird permit programs is covered by an existing OMB approval, No. 1018-0022. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

#### National Environmental Policy Act

We have determined that this rule is categorically excluded under the Department’s NEPA procedures in 516 DM 2, Appendix 1.10.

#### Government-to-Government Relationship with Tribes

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

#### Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the “Supplementary Information” section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any written comments about how we could make this rule

easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may e-mail comments to: *Exsec@ios.doi.gov*.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. You may call 703/358-2329 to make an appointment to view the files. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. Under limited circumstances, as allowable by law, we can withhold from the rulemaking record a respondent’s identity. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representing an organization or business, available for public inspection in their entirety.

#### List of Subjects

##### 50 CFR Part 17

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

##### 50 CFR Part 21

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

For the reasons set forth in this preamble, the U.S. Fish and Wildlife Service proposes to amend Title 50, Chapter I, Subchapter B of the CFR as follows:

#### PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

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

##### § 17.21 Prohibitions.

\* \* \* \* \*

(c) \* \* \*

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

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

(i) Notifies the issuing Migratory Bird Permit Program Office immediately upon receipt of such bird (contact information can be obtained from the Internet at <http://offices.fws.gov>), and

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

(7) Notwithstanding paragraph (c)(1) of this section, persons exempt from the permit requirements of part 21 under paragraphs 21.12(c) and (d) may take endangered migratory birds without an endangered species permit in performing the activities authorized under paragraphs 21.12(c) and (d).

(d) \* \* \*

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

(i) Notifies the issuing Migratory Bird Permit Program Office immediately upon receipt of such bird (contact information can be obtained from the Internet at <http://offices.fws.gov>), and

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

(4) Notwithstanding paragraph (d)(1) of this section, persons exempt from the permit requirements of part 21 under paragraphs 21.12(c) and (d) may possess and transport endangered migratory bird species without an endangered species permit in performing the activities authorized under paragraphs 21.12(c) and (d).

\* \* \* \* \*

## PART 21—MIGRATORY BIRD PERMITS

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

**Authority:** Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106-108.

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

### § 21.2 Scope of regulations.

\* \* \* \* \*

(b) This part, except for § 21.22 (banding and marking), § 21.29 (falconry), and § 21.31 (rehabilitation), does not apply to the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*), for

which regulations are provided in part 22 of this subchapter.

\* \* \* \* \*

5. Amend § 21.12 by adding new paragraphs (c) and (d) to read as follows:

### § 21.12 General exceptions to permit requirements.

\* \* \* \* \*

(c) Employees of Federal, State, and local wildlife agencies; employees of Federal, State, and local public health agencies; and laboratories under contract to such agencies may in the course of official business collect, possess, transport, and dispose of sick or dead migratory birds or their parts for analysis to confirm the presence of infectious disease. Nothing in this section authorizes the take of uninjured or healthy birds without prior authorization from the Service. Additionally, nothing in this section authorizes the taking, collection, or possession of migratory birds when circumstances indicate reasonable probability that death, injury, or disability was caused by factors other than infectious disease and/or natural toxins. These factors may include, but are not limited to, oil or chemical contamination, electrocution, shooting, or pesticides. If the cause of death of a bird is determined to be other than natural causes or disease, Service law enforcement officials must be contacted without delay.

(d) Licensed veterinarians are not required to obtain a Federal migratory bird permit to temporarily possess, stabilize or euthanize sick and injured migratory birds. However, veterinarians must transfer any such bird to a permitted rehabilitator as soon as is practicable following necessary treatment, unless the bird is euthanized. Veterinarians must notify the local Service Ecological Services Office immediately upon receiving a threatened or endangered migratory bird species. Contact information for Ecological Services offices can be located on the Internet at <http://offices.fws.gov>. Veterinarians must administer euthanasia in accordance with § 21.31(e)(3)(ii). Disposition of dead migratory birds must be in accordance with § 21.31(e)(3)(iv). Veterinarians must comply with the recordkeeping requirements in § 21.31(e)(5).

6. Amend part 21, subpart C, by adding a new § 21.31 to read as follows:

### § 21.31 Rehabilitation permits.

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

migratory bird for rehabilitation purposes. However, any person who finds a sick, injured, or orphaned migratory bird may, without a permit, take possession of the bird in order to immediately transport it to a permitted rehabilitator.

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

(1) The permit authorizes you to:

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

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

(iii) Conduct euthanization and/or necropsy (for threatened or endangered species, euthanization and necropsy require prior approval from your Regional Migratory Bird Permit Program Office);

(iv) Transfer or dispose of migratory birds; and

(v) Receive, possess for up to 24 hours, stabilize, and transfer types of migratory bird species not authorized by your permit, in cases of emergency.

(2) The permit does not authorize the use of migratory birds for educational purposes. Birds may not be displayed to the public unless you use video equipment or barriers that prevent the birds from both hearing and seeing the public. You may not use any equipment for this purpose that causes stress or harm, or impedes the rehabilitation of any bird.

(c) *How do I apply for a migratory bird rehabilitation permit?* You must submit your application to the appropriate Regional Director—Attention Migratory Bird Permit Program Office. You can find addresses for the appropriate Regional Directors in § 2.2 of subchapter A of this chapter. Your application must contain the information required under § 13.12(a) of this chapter, and the following information:

(1) A description of your experience and training in maintaining and rehabilitating migratory birds. Include a list of the species with which you have worked, noting any threatened and endangered species; the types of injuries you have treated; and the treatments provided.

(2) A list of types of species you intend to rehabilitate (e.g., passerines, raptors, etc.).

(3) A description of your rehabilitation facilities. Attach photographs and diagrams of your enclosures. Diagrams must include dimensions and a description of interior

and exterior construction materials, such as flooring and caging materials. Indicate the species or type of species to be housed in each.

(4) A letter of recommendation from a permitted rehabilitator who is familiar with your training and experience, including experience with threatened and endangered species. Also provide a letter from a permitted rehabilitator stating his or her willingness to provide you with assistance. If these are the same individual, a single letter will suffice.

(5) A letter from a licensed veterinarian acknowledging agreement to work with you by providing any necessary veterinary assistance. Any first-hand knowledge of your training or qualifications for rehabilitating migratory birds should be addressed in the letter.

(6) The names of persons (subpermittees) who will be assisting you, including anyone who will be regularly transporting birds to or from your facility. Anyone who will be performing permitted activities in your absence must be at least 18 years of age and listed on your permit as a subpermittee. You must include a description of the qualifications of anyone who will be performing permitted activities in your absence, including any experience with threatened or endangered species. If a subpermittee will be authorized to rehabilitate migratory birds at a site other than your facility, you need to provide the following information: name, address, date of birth, description of the individual's expertise in working with the type of species to be cared for, the type of care to be provided, and photographs and/or diagrams of the individual's facilities.

(7) A copy of your State rehabilitation permit or license, if one is required in your State.

(8) A check or money order made payable to the "U.S. Fish and Wildlife Service" in the amount of the application fee for permits issued under this section listed in § 13.11 of this chapter.

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

(i) Whether you are at least 18 years of age with adequate experience rehabilitating migratory birds.

(ii) Whether your facilities are adequate to properly care for the type(s)

of species of migratory birds for which you seek authorization to rehabilitate.

(iii) Whether you have an agreement with a qualified veterinarian to provide medical care for the birds you intend to rehabilitate.

(iv) Whether a State permit or license is required, and if so, whether you have the required permit or license.

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

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

(1) *Facilities.* To conduct the activities authorized by a rehabilitation permit, you must have appropriate facilities or a working relationship with a person or organization with such facilities. All facilities must be approved and identified on the face of your permit. In evaluating whether facilities are adequate, the Service will use as a guideline the current standards developed by the National Wildlife Rehabilitation Association and the International Wildlife Rehabilitation Council (Minimum Standards for Wildlife Rehabilitation).<sup>1</sup> The Regional Migratory Bird Permit Program Office may authorize variation from the standards where it is reasonable and necessary to accommodate a particular rehabilitator's circumstances. However, except as provided by paragraph (f)(2)(i) of this section, all facilities must adhere to the following criteria:

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

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

(iii) Facilities must be large enough to allow easy access for caring for the species of bird housed in the facility and to allow each bird to fully extend its wings.

(iv) The floor must be well-drained and kept clean.

(v) You must provide adequate perches for birds under your care.

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

(2) *Subpermittees.* Except as provided by paragraphs (e)(2)(ii) and (f)(2)(ii) of this section, anyone who will be assisting you by performing permitted activities in your absence must either possess his or her own Federal rehabilitation permit or be authorized as a subpermittee on your permit.

Subpermittees must be at least 18 years of age and possess sufficient experience to tend the species in their care. As the primary permittee, you are directly responsible for the actions of any subpermittees acting under your permit.

(i) Subpermittees authorized to care for migratory birds at a site other than your facility must have facilities adequate to house the species in their care. All such facilities must be approved and identified on the face of your permit.

(ii) Any individual who transports birds to or from your facility on a regular basis must either have his or her own permit, be listed on your permit as a subpermittee, or be named in a letter from you to your issuing Migratory Bird Permit Program Office.

(3) *Disposition of birds under your care.* You may not retain migratory birds longer than 180 days without additional authorization from your Regional Migratory Bird Permit Office. Every precaution must be taken to avoid imprinting or habituating birds in your care to humans, and all imprinted birds must be transferred to the Service or a designee of the Service.

(i) You must release all recuperated birds to the wild in an appropriate season and habitat for the species, preferably near the point where the bird was taken from the wild. If the appropriate season for release is outside the 180-day timeframe, you must seek authorization from the Service to hold the bird until the appropriate season. For most species, you should work with local and State wildlife agencies to identify appropriate release sites. Before releasing a threatened or endangered migratory bird, you must coordinate with the nearest U.S. Fish and Wildlife Service Ecological Services Office. You can obtain contact information for this office from your issuing Migratory Bird Permit Program Office or from the Internet at <http://offices.fws.gov>.

(ii) Any bird that has sustained injuries requiring amputation of a leg, a foot, or a wing at the elbow (humero-ulnar joint) or above must be euthanized. You must euthanize any bird that, after medical treatment, is blind, cannot feed itself, perch upright,

<sup>1</sup> Copies may be obtained by contacting either the National Wildlife Rehabilitators Association: 14 North 7th Avenue, St. Cloud MN 56303-4766, or the International Wildlife Rehabilitation Council: 4437 Central Place, Suite B-4, Suisun, CA 94585-1633.

or ambulate without inflicting additional injuries to itself. You are required to obtain authorization from your issuing Migratory Bird Permit Program Office before euthanizing endangered and threatened migratory bird species. In some cases, the Service may designate a disposition other than euthanization for those birds. If Service personnel are not available, you may euthanize endangered and threatened migratory birds without Service authorization where prompt euthanization is warranted by humane consideration for the welfare of the bird.

(iii) Unreleasable live birds that are suitable for use in educational programs, foster parenting, research projects, or other permitted activities may be placed with persons permitted or otherwise authorized to possess migratory birds, with prior approval from your issuing Migratory Bird Permit Program Office.

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

(A) You must send all dead bald and golden eagles, and their parts and feathers, to: National Eagle Repository, Building 128, Rocky Mountain Arsenal, Commerce City, Colorado 80022.

(B) You must obtain approval from your issuing Migratory Bird Permit Program Office before disposing of or transferring any dead endangered or threatened migratory bird specimen, parts, or feathers.

(C) Unless specifically required to do otherwise by the Service, you must destroy all other dead specimens by burial or incineration.

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

(vi) You may possess no more than a reasonable number of feathers for the repair of damaged feathers of birds in your care.

(vii) You may draw blood and take other medical samples from the birds under your care for purposes of diagnosis and recovery of the individual bird, or for transfer to authorized facilities conducting research pertaining to a contagious disease or other public health hazard (e.g., West Nile virus).

(viii) All birds held under this permit remain under the stewardship of the

U.S. Fish and Wildlife Service and may be recalled at any time.

(4) *Notification to the U.S. Fish and Wildlife Service.* (i) When you acquire a threatened or endangered migratory bird species, or bald or golden eagle, whether live or dead, you are required to immediately notify your issuing Migratory Bird Permit Program Office.

(ii) You must immediately notify the local U.S. Fish and Wildlife Service Law Enforcement Office, and within 48 hours your issuing Migratory Bird Permit Program Office, if you have reason to believe a bird has been poisoned, electrocuted, shot, or otherwise subject to criminal activity. Contact information for local Service Law Enforcement offices can be located on the Internet at <http://offices.fws.gov>.

(iii) If the sickness, injury, or death of any bird is due or likely due to avian virus, or other contagious disease or public health hazard, you should notify your issuing Migratory Bird Program Office within 48 hours.

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

(6) *Annual report.* You must submit a completed Form 3–202–4 by January 31 of each year for the preceding year to your issuing Migratory Bird Permit Program Office.

(7) Additional conditions may be stipulated on the face of the permit at the discretion of the Regional Director.

(8) The permittee assumes responsibility for damage or injury to any person or property occasioned through the possession or handling of migratory birds, and the U.S. Government shall be indemnified against claims for damage or injury in such cases.

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

(1) Permit provisions in oil or hazardous material spills.

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

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

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

(2) Conditions specific to oil and hazardous waste spills.

(i) *Facilities.* Facilities used at the scene of oil or hazardous waste spills may be temporary, mobile, and in some circumstances, provide less space and protection from noise and disturbance than facilities authorized under paragraph (e)(1)(i) of this section. Such facilities should conform as closely as possible with the facility specifications contained in the Service policy, Best Practices for Migratory Bird Care During Oil Spill Response.

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

(g) *Will I also need a permit from the State in which I live?* Nothing in this section prevents a State from making and enforcing laws or regulations consistent with this section that are more restrictive or give further protection to migratory birds. If your State requires a license or permit to rehabilitate migratory birds, you must obtain that license or permit and adhere

to its requirements, in addition to the terms of your Federal permit.

(h) *How long is a migratory bird rehabilitation permit valid?* Your rehabilitation permit will expire on the

date designated on the face of the permit unless amended or revoked. No rehabilitation permit will have a term exceeding five (5) years.

Dated: November 13, 2001.

**Joseph E. Doddridge,**  
*Assistant Secretary for Fish and Wildlife and Parks.*

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