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**Penny Lassiter,**

*Director, Sector Policies and Programs Division.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Parts 19, 21, and 22

[Docket No. FWS-HQ-MB-2022-0023; FF09M30000-223-FXMB12320900000]

RIN 1018-BC76

#### Regulatory Authorizations for Migratory Bird and Eagle Possession by the General Public, Educators, and Government Agencies

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to amend our regulations to revise current regulatory authorizations and add new regulatory authorizations for possession of migratory birds and eagles and other purposes. These proposed changes would more efficiently and appropriately authorize the general public, educators, and government agency employees to possess birds and eagles in certain specific situations while meeting our obligations under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. We also propose a change to the Airborne Hunting Act regulations to clarify what Federal authorizations may be used to comply with that statute.

**DATES:** This proposed rule is available for public comment through July 31, 2023.

**Information Collection Requirements:** If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service (see "Information Collection" section below under **ADDRESSES**) by July 31, 2023.

**ADDRESSES: Comment submission:** You may submit written comments on this proposed rule and draft environmental review by one of the following methods:

- *Electronically at the Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and follow the instructions for submitting comments to Docket No. FWS-HQ-MB-2022-0023.
- *By hard copy via U.S. mail:* Public Comments Processing, Attn: FWS-HQ-MB-2022-0023; U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We will post all comments on <https://www.regulations.gov>, including any personal information you provide. See *Public Availability of Comments* below.

**Information Collection Requirements:** Send your comments on the information collection request to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov); or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803. Please reference OMB Control

Number 1018-BC76 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Jerome Ford, Assistant Director—Migratory Birds Program, U.S. Fish and Wildlife Service, telephone: 703-358-2606, email: [MB\\_mail@fws.gov](mailto:MB_mail@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Fish and Wildlife Service is the Federal agency delegated with the primary responsibility for managing migratory birds, including bald eagles and golden eagles. Our authority derives primarily from the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703-12 (MBTA), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Russian Federation. The MBTA protects certain migratory birds from take, except as permitted under the MBTA. We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are set forth at 50 CFR part 21. In addition, the Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d (hereafter referred to as the Eagle Protection Act), prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Protection Act authorizes the Secretary of the Interior to issue regulations to permit the "taking" of eagles for various purposes, including the protection of "other interests in any particular locality" (16 U.S.C. 668a), provided the taking is compatible with the preservation of eagles. Regulations pertaining to eagle permits are set forth at 50 CFR part 22.

The Service has long authorized activities under regulatory authorizations. The origins of the regulatory authorization "general exceptions to permit requirements" (50 CFR 21.12) can be traced back as far as 1944. This proposed rulemaking action would improve organization and transparency by redesignating the existing regulatory authorizations codified at 50 CFR 21.12(a)-(d) to their own sections. The Service also proposes new regulatory authorizations. Finally,

we propose to modify the limitations on permits under the Airborne Hunting Act regulations (50 CFR part 19) to support emerging uses of technology for bird conservation.

### Proposed Rule

We propose to revise existing regulatory authorizations and add new regulatory authorizations by amending various provisions in the regulations governing migratory bird permits (50 CFR part 21) and the regulations governing eagle permits (50 CFR part 22). Additional proposed amendments to 50 CFR parts 21 and 22 would update references to 50 CFR 21.12. We also propose to add a definition for “humane and healthful conditions” to 50 CFR 21.6 and 22.6, remove the current regulatory authorization for the possession of live migratory birds, and make clarifying changes to Federal authorizations under Airborne Hunting Act regulations (50 CFR 19.21). We describe each of the proposed regulations in more detail below in this preamble.

Regulatory authorizations are regulations that establish eligibility criteria and conditions for the take or possession of migratory birds by an entity without requiring a permit to conduct those activities. Regulatory authorizations can include conditions and recordkeeping, reporting, and inspection requirements but otherwise have a relatively low administrative burden and require little to no interaction with the Service. Regulatory authorizations are most appropriate for situations that have straightforward eligibility criteria, do not require case-by-case customization of conditions, and pose a low risk to migratory bird populations. Entities that are eligible for a regulatory authorization must comply with the required conditions, including records and reporting requirements, and are subject to enforcement for noncompliance.

The Service proposes modifications to five existing regulatory authorizations (currently in 50 CFR 21.12(a)–(d) and indicated with “proposed for revision” in the preamble headings below). These modifications clarify language in these existing authorizations that is unclear or has created unintended restrictions or allowances. In this rulemaking, the Service also proposes new regulatory authorizations. These regulatory authorizations are for activities currently authorized under existing permit types for the following purposes: salvage, activities by agency natural resource employees, and exhibition of eagle specimens. The proposed regulations are not authorizing a new

activity: Instead, they are proposing to change the authorization mechanism from a permit to a regulatory authorization. After decades of issuance, these permit types have straightforward eligibility criteria, and the permit conditions do not require case-by-case customization, making them appropriate for a regulatory authorization.

#### *General Public—Birds in Buildings Authorization (Proposed for Revision)*

Current regulations include a regulatory authorization that authorizes any person to remove a migratory bird from the interior of a building or structure (50 CFR 21.12(d)). We propose to redesignate this regulation to 50 CFR 21.14 and make clarifying revisions. We propose to expand the authorization from the current text of “residence or a commercial or government building” to “residence, business, or similar human-occupied building or structure.” We propose to amend current text that inadvertently excluded structures similar to buildings, such as belltowers. It is beneficial to birds and humans for us to allow removal of birds unintentionally trapped in the interior of any building or structure. As proposed, this authorization would not apply to birds or nests on the exterior of a building or structure. Removal of active nests on the exterior of buildings would continue to require a permit, such as in exterior eaves or bridges. We also propose additional text that would require any removal of birds to be undertaken under humane and healthful conditions and also include sources for technical assistance.

#### *General Public—Salvage Authorization*

Current regulations require a permit for any person to salvage (*i.e.*, pick up) migratory birds found dead, including parts, feathers, nonviable eggs, and inactive nests. Salvage permits are currently issued under the special purpose permits regulations (50 CFR 21.95). We propose a new authorization at 50 CFR 21.16 for any person to salvage migratory birds found dead. Federal, State, or local guidance for safe handling and disposal of dead wildlife should be followed. All birds salvaged must be promptly disposed of by donation to a person or entity authorized to receive them, such as for purposes of education or science, or disposed of by complete destruction. Any person may contact the Service Migratory Bird Program to determine if an entity is authorized to receive donated birds. Birds may not be retained for personal use, sold, bartered, or traded.

We propose this authorization for two reasons. First, to address one-time salvage situations such as: a person who finds a migratory bird in good condition and seeks to put the remains to good use by donation to a nature center; or a person who picks up a dead bird to put it in the trash. It does not make sense to prohibit these everyday activities or to require a permit to conduct them. Second, this proposed regulatory authorization would also relieve the administrative burden of the permitting process for both the Service and for those who salvage birds with some regularity. Salvage permits have minimal issuance criteria and no customized permit conditions. To reduce the administrative burden for the public and the Service, we propose to replace the current permit requirement for salvage with a regulatory authorization.

The Service recognizes that bald eagles and golden eagles hold cultural significance for many Native American Tribes. In honor of our trust relationship with Native American Tribes, the proposed regulation limits the disposition of (*i.e.*, what can be done with) salvaged bald eagles and golden eagles. Current salvage permit conditions require that salvaged eagles, parts, and feathers be disposed of by donation to the Service’s National Eagle Repository in Commerce City, CO, and that the Repository be contacted for donation instructions. Currently, persons without salvage permits who find an eagle must notify a local, State, or Federal wildlife agency that has authorization to salvage the eagle, parts, or feathers. The agency then sends the items to the National Eagle Repository. However, most wildlife agencies have limited capacity to engage in these activities, which results in many found eagles, parts, and feathers failing to reach the National Eagle Repository. The proposed regulation would help relieve this problem and increase the availability of eagles to members of federally recognized Tribes through the National Eagle Repository.

We propose to continue to require that any salvaged bald eagles or golden eagles be donated to the National Eagle Repository and to allow the National Eagle Repository to determine if eagles, parts, or feathers are unsuitable for distribution. However, the proposed rule provides that, if determined unsuitable by the National Eagle Repository, those items could be donated for scientific or exhibition purposes or completely destroyed. The proposed rule does not change the authorization for Native American

Tribes to retain eagles with a Tribal eagle remains permit (50 CFR 22.60).

*Public Institutions—Educational Use of Specimens Authorization (Proposed for Revision)*

Current regulations authorize certain public entities to possess migratory bird specimens (50 CFR 21.12(b)(1)). We propose to redesignate this regulation to 50 CFR 21.18 and make the following revisions: We propose to restrict this authorization to possession of specimens only (*i.e.*, exclude live birds) and to expand this authorization to all public entities (as defined in 50 CFR 10.12). We propose additional revisions to incorporate current universal permit conditions required in possession permits for educational use under the special purpose regulations at 50 CFR 21.95.

We propose to adopt the following interpretation of the term “public” as part of this rulemaking. “Public” in relation to a museum, zoological park, or scientific or educational institution is currently defined in our general permit regulations at 50 CFR 10.12 as referring to museums, zoological parks, and scientific or educational institutions 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. We would interpret the following terms used in this definition of “public” as follows:

- “Open to the general public” means an entity that is open on a regularly scheduled basis during publicly posted hours of at least 400 hours per calendar year or conducts at least 12 public educational programs per year. The entity may charge a fee for entry or to attend programs. A program would not qualify as a public program if access is restricted to a limited group of individuals.

- “Governmental service” means services provided by government agencies, including Federal, State, Tribal, or local agencies, as well as services provided by entities operating on behalf of a government agency, such as contractors. Those operating on behalf of an agency must have documentation (*e.g.*, a letter from the agency) authorizing operation.

- “Nonprofit organization” means an entity that is privately endowed (*i.e.*, funded) and Internal Revenue Service tax-exempt under 26 U.S.C. 501(c)(3).

- The term “endowed” is synonymous with “funded” and does not require a minimum endowment to qualify as public. The Service recommends that an entity’s financial health and stability should be sufficient

to cover the operational costs associated with the activities conducted as well as costs that will cover migratory bird or eagle placement in the event the entity must close. In future rulemaking, the Service may consider a minimum endowment requirement for certain permit types, such as those involving the possession of live birds. Individuals and for-profit entities do not qualify as “public.”

This proposed regulation would not authorize the possession of live migratory birds without a permit. The current regulations at 50 CFR 21.12(b)(1) authorize possession of live birds without a permit in certain situations for qualifying entities. We are proposing to eliminate general authorization to possess live birds and instead require a permit for those activities. Elsewhere in this issue of the **Federal Register**, the Service has also published an advance notice of proposed rulemaking regarding the exhibition of live migratory birds and eagles for educational purposes (RIN 1018–BF58). Any entity currently operating under 50 CFR 21.12(b)(1) may continue activities currently authorized by the regulatory authorization until the Service finalizes the proposed educational use regulations. Certain aspects of this proposed rulemaking must be finalized before promulgating the educational use rulemaking. For that reason, it is not feasible to leave the current regulatory authorization for live bird possession in place until the educational use regulations are finalized. Therefore, the Service proposes to remove the existing regulatory authorization for live possession of migratory birds but allow currently excepted entities to continue operating as authorized until the educational use regulations are finalized, at which time those entities would have to comply with the new regulations.

*Public Institutions—Authorization for Exhibition Use of Eagle Specimens*

Currently, an eagle exhibition permit (50 CFR 22.50) is required to possess eagle specimens for exhibition purposes, including mounts, feathers, parts, eggs, and nests. These permits are limited under the Eagle Protection Act to public museums, public scientific societies, or public zoological parks (16 U.S.C. 668a). We propose a regulatory authorization for public museums, public scientific societies, and public zoological parks to possess eagle specimens for exhibition use without a permit. This regulatory authorization does not include any taking of eagles, and any eagle specimens must have been legally obtained under the terms of

a part 22 eagle permit. These permits have straightforward issuance criteria and conditions that are standard for all permittees. The majority of these permittees are government entities that display a single, mounted eagle in a visitor center or building entrance. To reduce the administrative burden for these public entities and the Service, we propose to remove the permit requirement and instead authorize possession under a regulatory authorization. We propose to create a new subpart in part 22 for this regulatory authorization that will have a similar structure to part 21, which sets forth regulations for the exceptions to permit requirements in subpart B.

We anticipate there would be no change in the availability of eagles for members of federally recognized Tribes as a result of this proposed action. Nearly all eagle specimens for exhibition use are already in possession. Any eagle specimens newly acquired for exhibition use must be approved by the National Eagle Repository as not suitable for Native American distribution. Authorization from the National Eagle Repository must accompany any newly acquired specimens before transfer to exhibition use.

The Eagle Protection Act (16 U.S.C. 668a) restricts authorization for scientific or exhibition purposes to “public museums, scientific societies, and zoological parks.” The Service uses a plain-English interpretation of “museum” and “zoological park,” by which a public museum is a building or place where objects are curated for and displayed to the public, and a zoological park is a place where living animals are kept in enclosures and displayed to the public. The Eagle Protection Act’s inclusion of the term “scientific societies” does not readily have a plain-English interpretation. The Service proposes to adopt the following interpretation: A public scientific society is any entity that, as part of its purpose, promotes public knowledge about science or conducts research and makes data and findings available to the public. Public scientific societies may include government agencies, schools and universities, and nongovernmental organizations. Qualifying as a public museum, scientific society, or zoological park is only one of the criteria necessary to conduct eagle exhibition or eagle scientific collecting activities. We would continue to maintain appropriate standards for evaluating an entity’s qualifications relative to the authorization requested.

*Licensed Veterinarians Authorization  
(Proposed for Revision)*

A regulatory authorization currently authorizes licensed veterinarians to provide veterinary care of sick, injured, and orphaned migratory birds including eagles (50 CFR 21.12(c)). We propose to redesignate this regulation to 50 CFR 21.20 and make the following revisions: (1) edit the existing language to improve readability, (2) clarify what is included in veterinary care, and (3) clarify expectations regarding disposition of live and dead migratory birds. The proposed language is consistent with the rehabilitation regulations (50 CFR 21.76).

*Mortality Event Authorization (Proposed for Revision)*

Regulations currently authorize natural resource and public health agency employees to address avian disease outbreaks (50 CFR 21.12(b)(2)) without a permit. We propose to redesignate this regulation to 50 CFR 21.32 and make the following revisions. We propose to clarify the existing language and expand the current scope of this authorization from disease outbreaks to all mortality events. A mortality event is an unforeseen event that kills an unexpectedly high number of individual birds in a particular location over a short period of time. The dead birds must exhibit similar pathological behavior prior to death or similar clinical signs. We propose to adopt the U.S. Geological Survey—National Wildlife Health Center’s interpretation of “unexpectedly high” as five or more individuals (see [usgs.gov/centers/nwhc](https://usgs.gov/centers/nwhc)). The National Wildlife Health Center is the science lead in the Department of Interior on the detection, control, and prevention of wildlife disease in the United States. The primary use of this regulatory authorization is to respond to avian infectious disease outbreaks, such as avian influenza or West Nile virus. Timely response is necessary to identify the cause of the outbreak, contain its spread, and reduce exposure and potential infection of humans, livestock, other domestic animals, and wildlife.

We propose to expand this authorization from infectious disease outbreaks to include other mortality events because many mortality events (e.g., those caused by toxins or mass starvation) may have an unclear cause at the time of discovery. A timely response is necessary to ensure public safety until the cause can be determined. The proposed authorization also clarifies that take of asymptomatic birds for activities such as disease monitoring is

not covered by this regulatory authorization. Instead, agencies conducting disease monitoring of asymptomatic, live birds should obtain a scientific collecting permit (50 CFR 21.73).

*Natural Resource Agency Employees Authorization*

Service and State wildlife agency employees are authorized under special purpose permits (50 CFR 21.95) to salvage birds, use migratory bird specimens for educational programs, transport birds to medical care, and relocate birds in harm’s way. The Service proposes to establish a new regulatory authorization for these activities at 50 CFR 21.34 and no longer require a permit. We propose this authorization to better facilitate agency employees conducting routine activities and reduce the administrative burden of the permit process on the Service and other natural resource agencies. The proposed regulation adopts the same permit conditions that the Service currently uses when issuing permits to employees of the Service and State wildlife agencies under the special purpose regulations at 50 CFR 21.95.

Currently, the Service issues permits to Federal and State wildlife agencies to conduct the activities as just described. The proposed authorization also includes natural resource agency employees of U.S. Territories and federally recognized Tribes. Most of the activities authorized under current permits are covered by the other proposed authorizations in subpart B, such as salvage (proposed 50 CFR 21.16), educational use (proposed 50 CFR 21.18 and 22.15), transportation to medical care (50 CFR 21.76), and relocation from inside of structures (proposed 50 CFR 21.14). This proposed authorization would authorize natural resource employees to possess sick, injured, or orphaned birds for up to 72 hours for transport to care and to humanely euthanize birds, if necessary. Natural resource agency employees are often in remote areas and are in the best position to provide humane care, without increasing bird stress by transporting long distances. Consistent with current permit conditions, this proposed regulatory revision would authorize the salvage of birds and relocation when birds or humans are at risk.

*Law Enforcement Authorization  
(Proposed for Revision)*

Regulations currently authorize Department of the Interior law enforcement personnel (50 CFR 21.12(a)) to conduct certain activities

without a permit. We propose to redesignate this regulation to 50 CFR 21.40 and clarify that this authorization pertains to all law enforcement agencies authorized to enforce laws consistent with the MBTA or Eagle Protection Act. This authorization would be limited to personnel performing official law enforcement duties. We also propose allowing law enforcement agents to temporarily designate authority to another individual to acquire, possess, transport, or dispose of migratory birds on behalf of law enforcement in certain circumstances—for example, to pick up and dispose of a deceased bird in a remote area. The temporary delegation should be recorded in writing by the law enforcement agent delegating the authority. The document must record the name and contact information of both the individual authorized and the authorizing agent as well as the dates authorized and clearly explain the extent of the actions the individual is authorized to perform.

*Humane and Healthful Conditions Definition*

Regulations currently require any live wildlife to be possessed under “humane and healthful conditions” (50 CFR 13.41). We propose adding a definition to the definitions sections for migratory bird permits (50 CFR 21.6) and eagle permits (50 CFR 22.6) to define “humane and healthful conditions” as the phrase applies to the possession of live migratory birds and live bald eagles and golden eagles. The definition would be identical for both part 21 and part 22. The proposed definition includes both temporary (e.g., trap–release activities) and long-term (e.g., rehabilitation or exhibition activities) possession. The proposed definition also clarifies that humane and healthful conditions include all aspects of possession and care, such as handling, housing, feeding, watering, sanitation, ventilation, shelter, protection from predators and vermin, enrichment, veterinary care, and euthanasia.

*Rehabilitation Regulations*

We propose to remove the reference to the *Minimum Standards for Wildlife Rehabilitation* (2000) as guidelines for evaluating the adequacy of caging dimensions (50 CFR 21.76(e)(1)). The National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council recently published an updated *Standards for Wildlife Rehabilitation* (2021). Rather than proposing to amend the regulation each time the National Wildlife Rehabilitators Association updates its standards, we will propose to develop a

public policy that identifies *Standards for Wildlife Rehabilitation* (2021) as the Service's standard guidance document for use in evaluating humane and healthful conditions at rehabilitation facilities.

#### *Airborne Hunting Act Regulations*

The harassment of migratory birds does not require authorization under the MBTA. However, the Airborne Hunting Act (AHA; 16 U.S.C. 742j–1) prohibits the use of an aircraft to harass any wildlife, which includes migratory birds (50 CFR 19.11). Current regulations authorize the harassment of migratory birds under the AHA (50 CFR 19.21), but authorization is currently limited to activities that can be authorized under depredation permits (50 CFR 21.100).

The regulations in 50 CFR part 19 have not been substantively revised since they were issued on January 4, 1974. The AHA defines “aircraft” as “any contrivance used for flight in the air” (16 U.S.C. 742j–1(c)). In 1974, the meaning of an “aircraft” was limited to vehicles controlled by an onboard pilot. More recently, the meaning of “aircraft” has expanded to reflect the use of unmanned vehicles including drones.

Unmanned Aircraft Systems (UAS) are classified as “aircraft” by the U.S. Department of the Interior's Office of Aviation Services (Information Bulletin 13–05) and meet the AHA's definition; however, they are functionally very different from onboard-piloted aircraft. The use of UAS has expanded greatly and was understandably not envisioned at the time of the 1974 rulemaking. Many uses of UAS are beneficial to migratory bird conservation and safer for humans but fall outside the scope of depredation permits. For example, seabird research on rocky outcrops and islands has been limited because human access to these areas is difficult or unsafe. Human presence can also disturb the colony. However, UAS have been successfully used in these environments to count seabirds and monitor success. Raptors nests on human infrastructure such as towers provide another example where UAS use is beneficial to both humans and birds. Project proponents often must alter work on infrastructure if a nest has eggs or chicks present; however, humans climbing infrastructure to identify nest status can be unsafe for humans and birds if adult birds attempt to defend the nest. UAS can be used to quickly view into the nest and determine nest status. The Service considers use of UAS in both of these examples to be better for migratory birds, safer for humans, and also outside

the scope of what can currently be permitted under depredation permits.

We propose to continue authorizing aircraft use (including UAS use) that may potentially harass migratory birds under migratory bird permits or eagle permits. However, we propose to expand this authorization to include any appropriate part 21 or part 22 permit, not just depredation permits. This proposed change will provide the necessary mechanisms to authorize the new and emerging uses of UAS that are consistent with the AHA's exception for permits that authorize “administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops” (16 U.S.C. 742j–1(b)(1)).

#### *Disqualifying Factors*

Part 13 describes general permit procedures, including issuance of permits (§ 13.21). This regulation includes factors that disqualify a person from receiving a permit. These factors include conviction of a felony violation of the MBTA or Eagle Protection Act, prior revocation of permits for certain reasons, failure to pay fees and fines, and failure to submit reports. The Service considers regulatory authorizations to constitute a permit, as defined in 50 CFR 10.12. The regulation is the document issued by the Service which describes, authorizes, and limits the activity and is signed by the authorized official, the DOI Assistant Secretary of Fish, Wildlife, and Parks. To clarify that disqualifying also apply to regulatory authorizations, we propose adding § 21.5 and § 22.5, which would adopt the part 13 disqualifying factors for all activities authorized by permit, including regulatory authorizations in part 21 and part 22.

#### *Editorial Corrections*

Because we are redesignating the regulatory authorizations to new CFR sections, we need to correct cross-references to these sections in other parts of our regulations. Affected sections include rehabilitation permits (§ 21.76), falconry standards and falconry permitting (§ 21.82), raptor propagation permitting (§ 21.85), and eagle scientific and exhibition permits (§ 22.50). We are not making any changes to the falconry regulations or raptor propagation regulations beyond updating regulation references. These proposed updates are administrative in nature; they do not change the species protected by the regulations or the permit requirements or any other requirements of the MBTA or its implementing regulations.

#### *Public Availability of Comments*

The public comment period begins with the publication of this document in the **Federal Register** and will continue through the date set forth above in **DATES**. Written comments that are received or postmarked by that date will become part of the public record associated with this proposed rulemaking action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. 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.

#### **Required Determinations**

##### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

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

Executive Order 13563 reaffirms the principles of E.O. 12866 and calls for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small

government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act and determined that this action would not have an economic impact on any small entities. This proposed rule is deregulatory in nature. It would expand the scope of current regulatory authorizations as well as eliminate current permits by creating new authorizations. Thus, we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This is not a major rule under SBREFA (5 U.S.C. 804(2)). This proposed rule would not have an annual effect on the economy of \$100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

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

a. This proposed rule would not "significantly or uniquely" affect small governments. A small government agency plan is not required. The regulatory revisions would not affect small government activities in any significant way.

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

#### *Takings*

In accordance with E.O. 12630, the proposed rule would not have significant takings implications. This proposed rule does not contain a provision for taking of private property, so a takings implication assessment is not required. This proposed rule is deregulatory in nature. It would expand

the scope of current authorizations as well as eliminate current permits by creating new authorizations.

#### *Federalism*

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

#### *Civil Justice Reform*

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

This proposed rule contains new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. We will ask OMB to review and approve the information collection requirements contained in this rulemaking related to permit applications, reports, and related information collections under the MBTA.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. 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.

The information that we collect to determine eligibility to possess migratory birds and eagles by the general public, educators, and government agencies is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity under the MBTA and Eagle Protection Act. The proposed new information collection requirements identified below require approval by OMB:

1. *Written Petitions—Request for Waiver from Disqualification (50 CFR 21.5)*—A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act (18 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) disqualifies any such person from exercising the authorization granted by regulation or permit under part 21, unless such disqualification has been expressly waived by the Director in response to a written petition.

2. *Obtaining Landowner Permission to Access Land (50 CFR 21.16)*—Regulations do not grant land access. Authorized individuals requiring access are responsible for obtaining permission from landowners when necessary and for complying with other applicable laws.

3. *3rd Party Notifications—National Eagle Repository (50 CFR 21.16)*—Authorized individuals who salvage a whole bald eagle or golden eagle (eagle), part of an eagle (*e.g.*, wing or tail), or feathers must immediately contact the National Eagle Repository and follow the Repository's instructions on transferring the eagle, parts, or feathers to the Repository.

4. *3rd Party Notifications—Transfer of Live Migratory Birds (50 CFR 21.20)*—Within 48 hours after hospitalization is no longer required, live migratory birds must be transferred to a federally permitted migratory bird rehabilitator. If unable to transfer a bird within that time, authorized individuals must contact their regional migratory bird

permit office for assistance in locating a permitted migratory bird rehabilitator, authorization to continue care, or a recommendation to euthanize the bird.

5. *3rd Party Notifications—Endangered and Threatened Wildlife (50 CFR 21.20)*—Licensed veterinarians must notify the appropriate Ecological Services Office within 24 hours of receiving a migratory bird that is also on the List of Endangered and Threatened Wildlife (50 CFR 17.11).

6. *Requests for Written Authorization—National Eagle Repository (50 CFR 22.15)*—Eagle specimens salvaged from the wild after [EFFECTIVE DATE OF FINAL RULE] must have written authorization from the National Eagle Repository for exhibition use.

7. *Agency Designation Letter (50 CFR 21.34)*—Individuals under the direct supervision of an agency employee (e.g., volunteers or agents under contract to the agency) may, within the scope of their official duties, conduct the activities authorized by this authorization. An authorized individual must have a designation letter from the agency describing the activities that may be conducted by the individual and any date and location restrictions that apply.

8. *Law Enforcement Authorization (50 CFR 21.40)*—Law enforcement personnel may designate authorization to non-law-enforcement personnel to acquire, possess, transport, or dispose of migratory birds on the behalf of law enforcement under this authorization. Designations must include the name and contact information of the individual designated, dates valid, activities authorized, and name and contact information of the authorizing agent.

9. *3rd Party Notifications—Federally Permitted Rehabilitator (50 CFR 21.14, 21.34)*—Authorized individuals must immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator's instructions when:

a. § 21.14—Any birds removed by trapping must be immediately released to the wild in a humane and healthful manner, unless the bird becomes exhausted, ill, injured, or orphaned. In that case, the authorized individual must immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator's instructions.

b. § 21.14—Authorized individuals may remove nests, eggs, and nestlings from the interior of a human-occupied building or structure. They are encouraged to seek the assistance of a federally permitted migratory bird rehabilitator or their regional Migratory

Bird Permit Office prior to removing eggs or nestlings.

c. § 21.34—Natural resource agency employees may transport sick, injured, or orphaned birds in accordance with § 21.76(a). If transport is not feasible within 24 hours, they must follow the instructions of a federally permitted migratory bird rehabilitator to provide supportive care, retain in an appropriate enclosure for up to 72 hours, or euthanize the birds.

10. *Tagging Requirements (50 CFR 21.16, 21.18)*—

a. § 21.16—Specimens intended for donation with the date, location of salvage, and the name and contact information of the person who salvaged the specimen. The tag must remain with the specimen.

b. § 21.18—Each migratory bird specimen must remain tagged with the species, date, location, name of the donor, and donor's authorization for acquisition. Specimen tags may be temporarily removed during educational programs.

c. § 22.15—Each eagle specimen must remain tagged with the species, date, location, name of the donor, and the donor's authorization for acquisition. Specimen tags may be temporarily removed during educational programs.

11. *Law Enforcement Notifications (50 CFR 21.16, 21.32)*—

a. § 21.16—Authorized individuals must notify the Service Office of Law Enforcement if illegal activity is suspected or if five or more birds are found dead and there is a risk of mortality due to disease.

b. § 21.32—Authorized individuals investigating mortality events must notify the Service Office of Law Enforcement if illegal activity is suspected.

12. *Verification of Legal Acquisition (50 CFR 21.18, 22.15)*—

a. § 21.18—Migratory bird specimens must be acquired from persons authorized by permit or regulation to possess and donate such items. Authorized individuals are responsible for ensuring specimens were legally acquired.

b. § 22.15—Bald eagle and golden eagle specimens must be acquired from persons authorized by permit or regulation to possess and donate such items. Authorized individuals are responsible for ensuring specimens were legally acquired.

13. *Records Retention Requirements (50 CFR 21.16, 21.18, 21.20, 22.15)*—

a. § 21.16—Authorized individuals must maintain records of all donated birds, including eagles sent to the National Eagle Repository for 5 years. Records must include species, specimen

type, date, location salvaged, and recipient. At any reasonable time upon request by the Service, the authorized individual must allow the Service to inspect any birds held under this authorization and to review any records kept.

b. § 21.18—Authorized individuals must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect the programs conducted, each specimen in possession, and, if applicable, specimen disposition. At any reasonable time upon request by the Service, the authorized individual must allow the Service to inspect any migratory bird specimens held under this regulatory authorization and review any records kept.

c. § 21.20—Licensed veterinarians must keep records for 5 years of all migratory birds held and treated under this authorization, including those euthanized. Records must include the species of bird, the type of injury, the date of acquisition, the date of death, cause of death, and disposition (e.g., live bird transferred, remains destroyed, or remains donated). Authorized individuals must present upon request of inspection such specimens and documents at any reasonable time.

d. § 21.34—Agencies must keep records for 5 years of activities conducted under this authorization. The records must include the species and number of birds, the type of activity, date, and disposition.

e. § 22.15—Authorized individuals must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect the programs conducted, each specimen in possession, and, if applicable, specimen disposition. Exhibition use of specimens under the regulations in this section authorizes the Service to inspect any eagle specimens held under this regulatory authorization and review any records kept at any reasonable time. Authorized individuals must present such specimens and documents for inspection upon request.

14. *3rd Party Notifications—Educational Programs (50 CFR 21.18)*—

a. § 21.18—Migratory bird specimens must be used for public educational programs or held for public archival purposes. Programs must include information about migratory bird ecology, biology, or conservation.

b. § 21.18—Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes.

c. § 22.15—Eagle specimens must be used for public educational programs or held for public archival purposes.

Programs must include information about eagle ecology, biology, or conservation.

15. *Notification Requirement—States (50 CFR 19.31)*—Upon issuance of a permit by a State to a person pursuant to this section, the issuing authority will provide immediate notification to the Special Agent in Charge having jurisdiction.

16. *Notification Requirement—States (50 CFR 19.31)*—Any State issuing permits to persons to engage in airborne hunting or harassing of wildlife or any State whose employees or agents participate in airborne hunting or harassing of wildlife for purposes of administering or protecting land, water, wildlife, livestock, domestic animals, human life, or crops, shall file with the Director an annual report on or before July 1 for the preceding calendar year ending December 31.

*Title of Collection:* Regulatory Authorizations for Migratory Bird and Eagle Possession by the General Public, Educators, and Government Agencies; 50 CFR parts 21 and 22.

*OMB Control Number:* 1018–New.

*Form Numbers:* None.

*Type of Review:* New.

*Respondents/Affected Public:* Individuals; private sector; and State/local/Tribal governments.

*Total Estimated Number of Annual Respondents:* 4,001.

*Total Estimated Number of Annual Responses:* 4,001.

*Estimated Completion Time per Response:* Varies from 15 minutes to 1 hour, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 3,111.

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

*Frequency of Collection:* On occasion.

*Total Estimated Annual Nonhour Burden Cost:* None.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov). Please reference OMB Control Number 1018–BC76 in the subject line of your comments.

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and Department regulations at 43 CFR part 46. The proposed action is categorically excluded from further NEPA

consideration under the departmental exclusion at 43 CFR 46.210 and as listed in 516 DM 8.5(C)(1): “the issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter I, Subchapter B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.” The Service considers regulatory authorizations, also called permit exceptions, to be a type of permit. Permit is defined in 50 CFR 10.12, and the Service considers the regulation to be the document issued by the Service which describes, authorizes, and limits the activity. In the case of regulations, the authorized official is the DOI Assistant Secretary of Fish, Wildlife, and Parks. Therefore, promulgation of a regulatory authorization that causes no or negligible environmental disturbance falls within the categorical exclusion for permits.

#### *Endangered and Threatened Species*

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Secretary [of the Interior] shall review other programs administered by the Secretary and utilize such programs in furtherance of the purposes of this Act (16 U.S.C. 1536(a)(1)). It further states that the Federal agency must “ensure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)). This proposed rule would not affect endangered or threatened species or critical habitats.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that this rule would not interfere with Tribes’ abilities to manage themselves, their funds, or Tribal lands. We add provisions to expand Tribal authorization and self-governance.

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

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

#### *Clarity of the 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:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

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

#### **List of Subjects**

##### *50 CFR Part 19*

Aircraft, Fish, Hunting, Reporting and recordkeeping requirements, Wildlife.

##### *50 CFR Part 21*

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

##### *50 CFR Part 22*

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

#### **Proposed Regulation Promulgation**

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

#### **PART 19—AIRBORNE HUNTING**

- 1. The authority citation for part 19 continues to read as follows:

**Authority:** Fish and Wildlife Act of 1956, 85 Stat. 480, as amended, 86 Stat. 905 (16 U.S.C. 742a–j–1).

- 2. Revise § 19.21 to read as follows:



**§ 19.21 Limitation on Federal permits.**

No Federal permits will be issued to authorize any person to hunt, shoot, or harass any wildlife from an aircraft, except for Federal permits issued under part 21 or part 22 of this subchapter.

**PART 21—MIGRATORY BIRD PERMITS**

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

**Authority:** 16 U.S.C. 703–712.

**Subpart A—Introduction and General Requirements**

■ 4. Amend § 21.4 by revising the section heading and paragraph (b) to read as follows:

**§ 21.4 Scope of regulations.**

\* \* \* \* \*

(b) The regulations in this part, except for § 21.16 (salvage authorization), § 21.20 (licensed veterinarian authorization), § 21.32 (mortality event authorization), § 21.34 (natural resource agency employees authorization), § 21.40 (law enforcement authorization), § 21.70 (banding or marking), § 21.76 (rehabilitation permits), and § 21.82 (falconry standards and falconry permitting), do 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. Add § 21.5 to read as follows:

**§ 21.5 Disqualifying factors.**

A person is disqualified from exercising the authorization granted by permit, including regulatory authorizations, under part 21, unless waived by the Director in response to a written petition, if the person:

(a) Has been convicted or plead guilty or nolo contendere for a felony violation of the Lacey Act (18 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

(b) Has had the same or similar authorization revoked (§ 13.28) within the last 5 years.

(c) Has failed to pay required fees, penalties, or other money owed to the United States. Disqualification is effective as long as the deficiency exists, except, in the case of repeated failure to pay, the Service notifies the person in writing of permanent disqualification.

(d) Has failed to submit timely, accurate, or valid reports as required, as long as the deficiency exists. Disqualification is effective as long as the deficiency exists, except, in the case of repeated failure to meet reporting

requirements, the Service notifies the person in writing of permanent disqualification.

■ 6. Amend § 21.6 by adding a definition for “Humane and healthful conditions” in alphabetic order to read as follows:

**§ 21.6 Definitions.**

\* \* \* \* \*

*Humane and healthful conditions* means using methods supported by the best available science that minimize fear, pain, stress, and suffering of a migratory bird held in possession. This definition applies during capture, possession (temporary or long term), or transport. Humane and healthful conditions pertain to handling (*e.g.*, during capture, care, release, restraint, and training), housing (whether temporary, permanent, or during transport), shelter, feeding and watering, sanitation, ventilation, protection from predators and vermin, and, as applicable, enrichment, veterinary care, and euthanasia.

\* \* \* \* \*

**Subpart B—Exceptions to Permit Requirements**

■ 7. Add § 21.14 to read as follows:

**§ 21.14 Birds in buildings authorization.**

(a) Any person may, without a permit, humanely remove a migratory bird from the interior of a residence, business, or similar human-occupied building or structure under the conditions set forth in this section. This authorization does not apply to birds or nests on the exterior of buildings, such as siding or eaves, or to structures that are not human-occupied, such as barns or bridges.

(b) This authorization is subject to the following conditions:

(1) *Humane conditions.* Any trapping, handling, transporting, or release of migratory birds must be conducted under humane and healthful conditions as defined in § 21.6. You may not use adhesive traps (such as glue traps) or any other method of capture likely to harm the bird. For technical assistance, contact your regional Migratory Bird Permit Office, USDA–Wildlife Services, or a federally permitted migratory bird rehabilitator.

(2) *Release.* Any birds removed by trapping must be immediately released to the wild in a humane and healthful manner, unless the bird becomes exhausted, ill, injured, or orphaned. In that case, immediately contact a federally permitted migratory bird rehabilitator and follow the rehabilitator’s instructions.

(3) *Nests.* You may remove nests, eggs, and nestlings from the interior of a human-occupied building or structure. You are encouraged to seek the assistance of a federally permitted migratory bird rehabilitator or your regional Migratory Bird Permit Office prior to removing eggs or nestlings. When possible, prevent the need for take of occupied nests by waiting until nestlings fledge. You may transport eggs or nestlings to a federally permitted migratory bird rehabilitator, if the rehabilitator recommends that you do so. Otherwise, you may humanely destroy eggs or euthanize nestlings following the Avian Veterinary Medical Association Guidelines for the Euthanasia of Animals or an equivalent process.

(4) *Prevention.* To the degree feasible, you must prevent birds from reentering buildings or structures by taking such actions as patching holes or installing bird exclusion devices. Exclusion devices must be regularly monitored, maintained, and repaired to ensure they remain effective and to prevent entrapment, injury, or death.

(5) *Disposal.* You may not lethally take migratory birds, except as authorized for chicks and eggs in paragraph (b)(3) of this section. If your actions to remove the trapped migratory bird are likely to result in lethal take of adult birds, you must first obtain a Federal migratory bird permit. If you otherwise comply with the requirements of this section and a bird you are trying to remove dies, you must immediately dispose of the remains by donation to an entity authorized to possess the bird by permit or regulatory authorization, or by destroying the remains in accordance with Federal, State, and local laws and ordinances.

(c) Additional authorization is required for bald eagles, golden eagles, and species on the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11(h)).

(d) You must also comply with any Federal, State, Tribal, or Territorial requirements that apply to removing migratory birds from buildings.

■ 8. Add § 21.16 to read as follows:

**§ 21.16 Salvage authorization.**

The regulations in this section authorize salvage activities and provide an exception to permit requirements for these activities.

(a) *Salvage of migratory birds.* Any person may salvage migratory bird specimens under the conditions set forth in this section. Specimens include whole birds found dead, parts, and feathers, including bald eagles and golden eagles. Inactive nests and

nonviable eggs, except for those of bald eagles or golden eagles, may also be salvaged under the regulations in this section. This authorization does not apply to live birds, viable eggs, or active nests.

(1) All salvaged specimens must be disposed of within 7 calendar days.

(2) You must tag each specimen intended for donation with the date, location of salvage, and the name and contact information of the person who salvaged the specimen. The tag must remain with the specimen.

(3) Nonviable eggs may not be salvaged during breeding season unless you are sufficiently skilled and able to discern viable eggs from nonviable eggs. Salvage of viable eggs is not authorized.

(4) If you encounter a migratory bird with a Federal band, you must report the band to the U.S. Geological Survey Bird Banding Laboratory.

(b) *Disposition of bald eagles and golden eagles.* (1) If you salvage a whole bald eagle or golden eagle (eagle), part of an eagle (e.g., wing or tail), or feathers, you must immediately contact the National Eagle Repository and follow the Repository's instructions on transferring the eagle, parts, or feathers to the Repository.

(2) If you salvage an eagle specimen that are not accepted by or the National Eagle Repository provides written authorization for donation of eagle specimen type listed in paragraph (b)(1) of this section, you may donate specimens to a public museum, public scientific society, or public zoological park authorized to receive eagle specimens for scientific or exhibition purposes under a valid permit authorization (50 CFR 22.15) or permit (50 CFR 22.50).

(3) If not disposed of in accordance with the regulations in paragraphs (b)(1) or (2) of this section, eagle specimens must be disposed of at the direction of the Service Office of Law Enforcement. Personal use is not authorized. Eagles may not be held in possession for more than 7 calendar days and may not be sold, bartered, or offered for purchase, sale, or barter.

(c) *Disposition of all other migratory birds.* (1) Except for bald eagles or golden eagles, migratory bird specimens may be disposed of by donation to any person or institution authorized to receive them under a valid permit or regulatory authorization.

(2) If not donated, migratory bird specimens must be disposed of by destroying specimens in accordance with Federal, State, and local laws and ordinances. Personal use is not authorized. Birds, parts, nests, and eggs may not be held in possession for more

than 7 calendar days and may not be purchased, sold, bartered, or offered for purchase, sale, or barter.

(d) *Records.* You must maintain records of all donated birds, including eagles sent to the National Eagle Repository for 5 years. Records must include species, specimen type, date, location salvaged, and recipient. At any reasonable time upon request by the Service, you must allow the Service to inspect any birds held under this authorization and to review any records kept.

(e) *Other requirements.* Additional Federal, State, Tribal, or Territorial permits may be required. This authorization does not grant land access. You are responsible for obtaining permission from landowners when necessary and for complying with other applicable laws.

(f) *Reporting to law enforcement.* You must notify the Service Office of Law Enforcement (see 50 CFR 10.22 for contact information) if you suspect birds were illegally killed or if five or more birds are found dead and there is a risk of mortality due to disease.

■ 9. Add § 21.18 to read as follows:

**§ 21.18 Educational use of specimens authorization.**

(a) *Scope.* For conservation education purposes, public entities ("public" as defined in 50 CFR 10.12) are authorized to possess lawfully acquired migratory bird specimens, including whole bird remains, parts, feathers, nests, and eggs, as described in the regulations in this section. This authorization does not apply to live birds, viable eggs, active nests, or bald eagles or golden eagles (see 50 CFR 22.15).

(b) *Acquisition.* Migratory bird specimens must be acquired from persons authorized by permit or regulation to possess and donate such items. You are responsible for ensuring specimens were legally acquired.

(c) *Disposition.* You may dispose of migratory bird specimens by donation to any person or institution authorized to receive them under a valid permit or regulatory authorization. Otherwise, you must dispose of migratory bird specimens by destroying them in accordance with Federal, State, or local laws and ordinances.

(d) *Possession.* Each migratory bird specimen must remain tagged with the species, date, location, name of the donor, and donor's authorization for acquisition. Specimen tags may be temporarily removed during educational programs. Migratory bird specimens may be taxidermied by a federally permitted taxidermist (§ 21.63) and returned to you. As part of their official

duties, employees and volunteers of a public entity may prepare specimens for your organization without a Federal taxidermy permit.

(e) *Educational programs.* Migratory bird specimens must be used for public educational programs or held for public archival purposes. Programs must include information about migratory bird ecology, biology, or conservation. Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes. Specimens may be used for observational research without additional authorization; however, removal of samples requires additional authorization (§ 21.73).

(f) *Prohibitions.* Specimens may not be purchased, sold, or bartered. You must not display any migratory bird specimens in a manner that implies personal use, such as inclusion in millinery, ornamental, or similar objects.

(g) *Records.* You must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect the programs conducted, each specimen in possession, and, if applicable, specimen disposition. At any reasonable time upon request by the Service, you must allow the Service to inspect any migratory bird specimens held under this regulatory authorization and review any records kept.

(h) *Other laws.* You must comply with any Federal, State, Tribal, or Territorial requirements that apply to possession of migratory bird specimens for educational use.

■ 10. Add § 21.20 to read as follows:

**§ 21.20 Licensed veterinarian authorization.**

(a) Any person who finds a sick, injured, or orphaned migratory bird, including bald eagles and golden eagles, may, without a permit, take possession of the bird for immediate transport to a licensed veterinarian or federally permitted migratory bird rehabilitator.

(b) Licensed veterinarians are authorized to take the following actions without a permit:

(1) For the purposes of providing veterinary care, take from the wild or receive from any person sick, injured, or orphaned migratory birds, including bald eagles and golden eagles.

(2) Perform diagnostics as well as surgical and nonsurgical procedures necessary for triage, including euthanizing migratory birds (See § 21.76(e)(4)(iii)–(iv)). Amputations and other procedures that could render a bird non-releasable may not be conducted under this authorization.

(3) Release migratory birds that have been in care less than 24 hours to suitable habitat in the wild.

(4) Transfer birds to a federally permitted migratory bird rehabilitator or licensed veterinarian.

(5) Dispose of dead migratory birds in accordance with § 21.76(e)(4)(vi) and dispose of dead bald eagles and golden eagles in accordance with § 21.76(e)(4)(vi)(C).

(c) Licensed veterinarians are not authorized to release to the wild migratory birds held in care longer than 24 hours. Migratory birds may not be determined non-releasable under this authorization. These activities require a rehabilitation permit (§ 21.76).

(d) Within 48 hours after hospitalization is no longer required, live migratory birds must be transferred to a federally permitted migratory bird rehabilitator. If unable to transfer a bird within that time, you must contact your regional migratory bird permit office for assistance in locating a permitted migratory bird rehabilitator, authorization to continue care, or a recommendation to euthanize the bird.

(e) Migratory birds in possession under this authorization must be maintained in humane and healthful conditions as defined in § 21.6.

(f) Licensed veterinarians must notify the appropriate Ecological Services Office within 24 hours of receiving a migratory bird that is also on the List of Endangered and Threatened Wildlife (50 CFR 17.11). See 50 CFR 2.2 for a list of Service regional offices.

(g) Licensed veterinarians must keep records for 5 years of all migratory birds held and treated under this authorization, including those euthanized. Records must include the species of bird, the type of injury, the date of acquisition, the date of death, cause of death, and disposition (*e.g.*, live bird transferred, remains destroyed, or remains donated). Upon request of inspection, individuals must present specimens and records at any reasonable time.

■ 11. Add § 21.32 to read as follows:

**§ 21.32 Mortality event authorization.**

(a) Natural resource and public health employees performing official duties are authorized without a permit to collect, possess, transport, and dispose of migratory birds found sick, injured, or dead as part of a mortality event. A mortality event is an unforeseen event that kills an unexpectedly high number of birds in a particular location over a short period of time with the birds all exhibiting similar pathological behavior or clinical signs. Birds or their parts may be analyzed for cause of death.

(b) Natural resource and public health employees include employees of:

(1) Government natural resource agencies;

(2) Government public health agencies;

(3) Government agricultural agencies; and

(4) Laboratories working on behalf of such agencies.

(c) Sick or injured birds may be humanely euthanized or transported to a federally permitted rehabilitator or licensed veterinarian for care or euthanasia. If euthanized, remains may be analyzed for cause of death.

(d) Take and possession of uninjured or asymptomatic birds, including for disease monitoring, is not covered under this authorization and requires a scientific collection permit (§ 21.73).

(e) Notify the Service Office of Law Enforcement (see 50 CFR 10.22 for contact information) if illegal activity is suspected.

■ 12. Add § 21.34 to read as follows:

**§ 21.34 Natural resource agency employees authorization.**

(a) *Excepted activities.* While performing their official duties, employees of Federal, State, Territorial, and federally recognized Tribal natural resource agencies may conduct the following activities without a permit:

(1) *Salvage.* Natural resource agency employees may salvage migratory bird remains found dead in accordance with the salvage authorization (§ 21.16).

(2) *Educational use.* Natural resource agency employees may possess migratory bird specimens for conservation education programs in accordance with the authorizations for use of educational specimens (§ 21.18) and the exhibition of eagle specimens (50 CFR 22.15). A permit is required to possess live birds, viable eggs, or active nests for educational use.

(3) *Transport.* Natural resource agency employees may transport sick, injured, or orphaned birds in accordance with § 21.76(a). If transport is not feasible within 24 hours, follow the instructions of a federally permitted migratory bird rehabilitator to provide supportive care, retain in an appropriate enclosure for up to 72 hours, or euthanize the birds.

(4) *Relocate.* Natural resource agency employees may trap and relocate migratory birds, nests, eggs, and chicks in accordance with § 21.14. Employees are authorized to conduct these activities to remove birds from structures or whenever birds or humans are at risk if birds are not relocated. Additional authorization is required for bald eagles, golden eagles, or migratory birds on the List of Endangered and Threatened Wildlife (50 CFR 17.11).

(b) *Volunteers and contractors.*

Individuals under the direct supervision of an agency employee (*e.g.*, volunteers or agents under contract to the agency) may, within the scope of their official duties, conduct the activities authorized by this authorization. An authorized individual must have a designation letter from the agency describing the activities that may be conducted by the individual and any date and location restrictions that apply.

(c) *Official capacity.* Employees and other authorized individuals must act within their official duties, training, and experience when conducting authorized activities, especially when handling live birds. Live birds must always be cared for under humane and healthful conditions as defined in § 21.6.

(d) *Records.* Agencies must keep records for 5 years of activities conducted under this authorization. The records must include the species and number of birds, the type of activity, date, and disposition.

■ 13. Add § 21.40 to read as follows:

**§ 21.40 Law enforcement authorization.**

(a) Law enforcement personnel authorized to enforce the provisions of the Migratory Bird Treaty Act (16 U.S.C. 706 and 708) or Bald and Golden Eagle Protection Act (16 U.S.C. 668b) may, in performing official duties and without a permit, take, acquire, possess, transport, and dispose of migratory birds (including bald eagles and golden eagles) whether alive or dead, including their parts, nests, or eggs.

(b) Law enforcement personnel may designate non-law-enforcement personnel to acquire, possess, transport, or dispose of migratory birds on the behalf of law enforcement under this authorization. Designations must include the name and contact information of the individual designated, dates valid, activities authorized, and name and contact information of the authorizing agent.

**Subpart C—Specific Permit Provisions**

■ 14. Amend § 21.76 by revising paragraphs (a), (e)(1), and (e)(4)(vi)(A) to read as follows:

**§ 21.76 Rehabilitation permits.**

(a) *What is the permit requirement?* Except as provided in § 21.20, 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 for

immediate transport to a permitted rehabilitator or licensed veterinarian.

\* \* \* \* \*

(e) \* \* \*

(1) *Facilities.* You must conduct the activities authorized by this permit in appropriate facilities that are approved and identified on the face of your permit. The Regional Migratory Bird Permit Office will authorize variations where reasonable and necessary to accommodate a particular rehabilitator's circumstances, unless that office determines that the variation is not humane for the migratory birds. However, except as provided by paragraph (f)(2)(i) of this section, all facilities must comply with the following criteria:

\* \* \* \* \*

(4) \* \* \*

(vi) \* \* \*

(A) 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 the regulations in subpart B of this part.

\* \* \* \* \*

■ 15. Amend § 21.82 by revising paragraphs (f)(12)(ii) and (v) and (f)(13)(ii) to read as follows:

**§ 21.82 Falconry standards and falconry permitting.**

\* \* \* \* \*

(f) \* \* \*

(12) \* \* \*

(ii) You may donate feathers from a falconry bird, except golden eagle feathers, to any person or institution with a valid permit to have them, or to anyone exempt from the permit requirement under the regulations in subpart B of this part.

\* \* \* \* \*

(v) If your permit expires or is revoked, you must donate the feathers of any species of falconry raptor except a golden eagle to any person or any institution exempt from the permit requirement under the regulations in subpart B of this part or authorized by permit to acquire and possess the feathers. If you do not donate the feathers, you must burn, bury, or otherwise destroy them.

(13) \* \* \*

(ii) You may donate the body or feathers of any other species of falconry raptor to any person or institution exempt from the permit requirement under the regulations in subpart B of this part or authorized by permit to acquire and possess such parts or feathers.

\* \* \* \* \*

■ 16. Amend § 21.85 by revising the section heading and paragraph (k)(1) to read as follows:

**§ 21.85 Raptor propagation permitting.**

\* \* \* \* \*

(k) \* \* \*

(1) You may donate the body or feathers of any species you possess under your propagation permit to any person or institution exempt from the permit requirement under the regulations in subpart B of this part or authorized by permit to acquire and possess such parts or feathers.

\* \* \* \* \*

**PART 22—EAGLE PERMITS**

■ 17. The authority citation for part 22 continues to read as follows:

*Authority:* 16 U.S.C. 668–668d; 703–712; 1531–1544.

**Subpart A—Introduction and General Requirements**

■ 18. Add § 22.5 to read as follows:

**§ 22.5 Disqualifying factors.**

A person is disqualified from exercising the authorization granted by permit, including regulatory authorizations, under part 22, unless waived by the Director in response to a written petition, if the person:

(a) Has been convicted or plead guilty or nolo contendere for a felony violation of the Lacey Act (18 U.S.C. 42, as amended), the Migratory Bird Treaty Act (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

(b) Has had the same or similar authorization revoked (§ 13.28) within the last 5 years.

(c) Has failed to pay required fees, penalties, or other money owed to the United States. Disqualification is effective as long as the deficiency exists, except, in the case of repeated failure to pay, the Service notifies the person in writing of permanent disqualification.

(d) Has failed to submit timely, accurate, or valid reports as required, as long as the deficiency exists. Disqualification is effective as long as the deficiency exists, except, in the case of repeated failure to meet reporting requirements, the Service notifies the person in writing of permanent disqualification.

■ 19. Revise § 22.6 by adding a definition for “Humane and healthful conditions” in alphabetic order to read as follows:

**§ 22.6 Definitions.**

\* \* \* \* \*

*Humane and healthful conditions* means using methods supported by the

best available science that minimize fear, pain, stress, and suffering of an eagle held in possession. This definition applies during capture, possession (temporary or long term), or transport. Humane and healthful conditions pertain to handling (e.g., during capture, care, release, restraint, and training), housing (whether temporary, permanent, or during transport), shelter, feeding and watering, sanitation, ventilation, protection from predators and vermin, and, as applicable, enrichment, veterinary care, and euthanasia.

\* \* \* \* \*

■ 20. Add § 22.15 under a new subpart B to read as follows:

**Subpart B—Exceptions to Permit Requirements**

**§ 22.15 Exhibition use of eagle specimens authorization.**

For conservation education purposes, public museums, public scientific societies, and public zoological parks are authorized to possess lawfully acquired eagle specimens, including whole bird remains, parts, feathers, nests, and eggs as described in the regulations in this section. This authorization does not apply to live eagles or viable eggs.

(a) *Acquisition.* Bald eagle and golden eagle specimens must be acquired from persons authorized by permit or regulation to possess and donate such items. You are responsible for ensuring specimens were legally acquired. Eagle specimens salvaged from the wild after [EFFECTIVE DATE OF FINAL RULE] must have written authorization from the National Eagle Repository for exhibition use.

(b) *Disposition.* You may dispose of eagle specimens by donation to any person or institution authorized to receive them under a valid permit or regulatory authorization. Otherwise, you must dispose of eagle specimens by destroying them in accordance with Federal, State, or local laws and ordinances.

(c) *Possession.* Each eagle specimen must remain tagged with the species, date, location, name of the donor, and the donor's authorization for acquisition. Specimen tags may be temporarily removed during educational programs. Eagle specimens may be taxidermied by a federally permitted taxidermist (50 CFR 21.63) and returned to you. As part of their official duties, employees and volunteers of a public entity may prepare specimens for your organization without a Federal taxidermy permit.

(d) *Educational programs.* Eagle specimens must be used for public educational programs or held for public archival purposes. Programs must include information about eagle ecology, biology, or conservation. Specimens held for archival purposes must be properly archived and readily accessible to the public for research purposes. Specimens may be used for observational research without additional authorization; however, removal of samples requires additional authorization (§ 22.50).

(e) *Prohibitions.* Specimens may not be purchased, sold, bartered, or offered for sale or barter. You must not display any eagle specimens in a manner that implies personal use.

(f) *Records.* You must maintain accurate records of operations on a calendar-year basis and retain these records for 5 years. Records must reflect the programs conducted, each specimen in possession, and, if applicable, specimen disposition. The Service may inspect any eagle specimens held under this regulatory authorization and review any records kept at any reasonable time. Individuals must present specimens and records for inspection upon request.

(g) *Other laws.* You must also comply with pertinent Federal, State, Tribal, or Territorial requirements.

### Subpart C—Specific Eagle Permit Provisions

■ 21. Amend § 22.50 by revising the section heading and the introductory text to read as follows:

#### § 22.50 Eagle scientific and exhibition 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 or exhibition purposes of public museums, public scientific societies, or public zoological parks. A permit is not required if your activities fall within the authorization for exhibition use of eagle specimens (§ 22.15). We will not issue a permit under the regulations in this section that authorizes the transportation into or out of the United States of any live bald or golden eagles, or any live eggs of these birds.

\* \* \* \* \*

**Shannon A. Estenoz,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2023–11652 Filed 5–31–23; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Parts 21 and 22

[Docket No. FWS–HQ–MB–2023–0015; FF09M31000–234–FXMB12320900000]

RIN 1018–BF58

#### Exhibition of Migratory Birds and Eagles

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

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

**SUMMARY:** This document advises the public that the U.S. Fish and Wildlife Service (Service, or we) intends to gather information necessary to develop a proposed rule for the exhibition of migratory birds and eagles. We are furnishing this advance notice of proposed rulemaking to advise other agencies and the public of our intentions and obtain suggestions and information on the scope of issues to include in the rulemaking.

**DATES:** We will consider comments received or postmarked on or before July 3, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

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

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. In the Search box, enter FWS–HQ–MB–2023–0015, which is the docket number for this action. Then click the Search button. On the resulting page, you may submit a comment by clicking on “Comment.” Please ensure that you have found the correct document before submitting your comments.

- *U.S. Mail:* Public Comments Processing, Attn: FWS–HQ–MB–2023–0015, U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide. See Public Comments, below, for more information.

#### FOR FURTHER INFORMATION CONTACT:

Jerome Ford, Assistant Director—Migratory Birds, telephone: 1–703–358–2606.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Fish and Wildlife Service is the Federal agency delegated with the primary responsibility for managing

migratory birds, including bald eagles and golden eagles. Our authority derives primarily from the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703–712 (MBTA), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Russian Federation. The MBTA protects certain migratory birds from take, except as permitted under the MBTA. We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are set forth at 50 CFR part 21.

In addition, the Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d (Eagle Act), prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act authorizes the Secretary of the Interior to issue regulations to permit the “taking” of eagles for various purposes, including the protection of other interests in any particular locality (16 U.S.C. 668a), provided the taking is compatible with the preservation of eagles. Regulations pertaining to eagle permits are set forth at 50 CFR part 22.

The Service currently authorizes the exhibition of migratory birds under a Special Purpose Possession Live permit (FWS Form 3–200–10c) issued under the special purpose permit regulations (50 CFR 21.95). Exhibition of bald eagles and golden eagles currently requires an Eagle Exhibition Live permit (FWS Form 3–200–14) issued under 50 CFR 22.50. On September 21, 2010, the Service proposed a permit regulation for the possession and use of migratory birds in educational programs and exhibits (75 FR 57413). Comments received on the proposed regulation were generally supportive. However, the Service did not finalize the rule due to prioritizing other rulemakings. The Service is now seeking to reinstate a rulemaking for migratory bird exhibition and eagle exhibition. However, enough has changed in the field of exhibition that the Service is seeking public input before preparing a new proposed rule.

We intend to propose new migratory bird exhibition regulations to authorize possession of live, non-releasable or captive-bred migratory birds for use in teaching people about migratory bird conservation and ecology. We also anticipate proposal of revisions to regulations authorizing eagle exhibition (50 CFR 22.50), in particular revisions for permittees that hold migratory bird exhibition permits or hold USDA exhibition licenses. The public response we receive in response to this advance notice of proposed rulemaking will help us develop proposed regulations that