

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-Publication of Notice Statement)

Amend Section 670 and Repeal Section 678
Title 14, California Code of Regulations (CCR)
Re: Practice of Falconry

I. Date of Initial Statement of Reasons: October 30, 2012

II. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: November 7, 2012
Location: Los Angeles
- (b) Discussion Hearing: Date: February 6, 2013
Location: Sacramento
- (c) Adoption Hearing: Date: March 6, 2013
Location: Mt. Shasta

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Existing regulations for the practice of falconry are contained in Title 14 CCR Section 670 (14 CCR 670) along with federal regulations in Title 50 Code of Federal Regulations Section 21 (50 CFR 21). These guide the practice of falconry within the state and establish the methods and limits for capture of raptors from the wild for falconry use. Under these regulatory sections, the Department of Fish and Game (Department) issues a license, with certain restrictions and conditions, for the capture, possession and use of wild, captive-bred, or hybrid raptors for the purpose of falconry.

In July 2009, the U.S. Fish and Wildlife Service (Service) revised CFR 50 21.28 and 21.29 to remove federal permitting for falconry. 50 CFR 21.29(b) now requires that before falconry may be practiced in any state, that state must approve the practice by issuing permits under its own laws and regulations and must submit copies of its regulations pertaining to falconry, including falconry permit requirements, to the Service. The state must develop falconry regulations that meet the federal standards established under 50 CFR 21.29. Certification of state regulations must be published in the Federal Register no later than January 1, 2014, at which point the federal permitting program will end and individual states will not be allowed to practice falconry if their regulations have not been approved and certified by the Service. State laws are allowed to be more restrictive than federal standards, but not more permissive.

The California regulations, which include proof that the database linkage between the Service and the Department's database is in place, must be submitted to the Service by September 1, 2013.

The specific purpose of this proposed regulation change is to amend 14 CCR 670 to meet the federal requirements; specifically, to comply with 50 CFR 21.29 by establishing and maintaining a permitting program. Much of California's current falconry regulation language needs to be modified to comply with federal regulation. Some new revisions to 14 CCR 670 are being proposed to the Fish and Game Commission based on species conservation needs as affected by falconry, input received from the public, and expertise within the Department.

The Department is proposing that the Commission repeal 14 CCR 678 to re-organize and simplify the reading of regulations regarding captive propagation. The language from Section 678 would be covered in new Section 670 regulations.

(b) Proposed Regulations

Amend Section 670

For ease of presentation, the proposed changes are provided in three separate categories below:

- provisions in the existing regulations that will be retained;
- provisions to comply with federal falconry regulations; and
- new regulations.

Provisions in the existing regulations that will be retained:

- General provisions will call for a valid falconry license to practice falconry in California, the possession of a valid hunting license when engaged in taking game species, and references the Fish and Game Code, Migratory Bird Treaty Act and Title 50, Code of Federal Regulations (CFR), Part 21.
- Any listed species incidentally taken by a falconry raptor shall be removed from the raptor and left onsite.
- The Department will consider an applicant's falconry experience level when issuing a license.
- Examination requirements will remain the same as current regulation in that a new licensee must take the exam and answer at least 80% of the questions correctly to pass. The applicant who fails can retake the exam no earlier than three months from the date of the prior exam. An applicant who provides proof of passing an exam from another state will not have to take the exam for California as long as the exam was taken within five years.
- Falconry classes will remain as Apprentice, General, and Master.
- Sponsorship requirement for an Apprentice falconer will remain at 2 years.

- Apprentices are allowed to possess only American kestrel and red-tailed hawk, and may only possess one raptor at a time.
- Apprentice falconers are required to be at the Apprentice level for two years prior to advancing to the General class and must submit annual reports to the Department.
- General falconers are required to be at the General class for five years prior to advancing to Master class.
- Falconers will be limited to capture from the wild of no more than two raptors annually and only as authorized for each falconry class license.
- Nonresidents may apply to capture a wild raptor species allowed for falconry in California.
- Only trap or net methods that do not injure raptors are to be used, and that all traps are to be marked with the name and address of licensee and checked at least once every 12 hours, except that snare-type traps are to be attended at all times.
- No more than two nestlings can be captured by the same General or Master licensee during the regulatory year, and at least one nestling must be left in a nest at all times.
- Definition of the Lake Tahoe Basin remains the same.

Some requirements were adopted directly from federal falconry regulations to ensure California's full compliance with the federal falconry regulations. The state is allowed to be more restrictive than federal regulations, but not allowed to be more liberal than the federal regulations.

Provisions to comply with federal falconry regulation:

- Falconers will be required to ensure take of listed species is minimized by not flying raptors near listed species, and will be required to report take of listed species to the nearest Department regional offices or Service office within 10 calendar days of the incident.
- A signed certification from falconers at the time of a new license or license renewal will now be required, saying *"I certify that I have read and am familiar with both the California and U.S. Fish and the Wildlife Service falconry regulations, and the federal Migratory Bird Treaty Act, and that the information I am submitting is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to cancellation of the application, suspension or revocation of the license, and/or administrative, civil, or criminal penalties."*
- New regulations would allow the Department to recognize a valid falconry license from another state during the application process for a California falconry license and would specify lapsed license renewal requirements. If a license has lapsed for fewer than five years, the license may be renewed at the level held. If a license has lapsed for five years or more, the applicant must take and pass the examination. Upon passing the examination, a license may be renewed at the level previously held.
- New regulations would allow nonresident falconers or non-U.S. citizen falconers to temporarily practice falconry in California for up to 120

calendar days with proper documentation to the Department. A nonresident or non-U.S. citizen falconer may fly raptors of a licensed California falconer and must maintain temporary housing and equipment while flying falconry raptors in California. Nonresident or non-U.S. citizens may house their falconry raptors at a licensed California falconer's facility.

- Specifications would be outlined for the sponsorship program for an Apprentice falconer, including roles and responsibilities of the sponsor, requirements for being a sponsor, duration of sponsorship, and instructions for what to do in the case of sponsorship termination. A sponsor may only be a Master falconer, or a General falconer with at least 2 years of experience at the General class.
- The minimum age of an Apprentice falconer would be 12 years. If applicant is under 18, a parent or legal guardian must co-sign the application and would be legally responsible for activities of the Apprentice falconer. Raptors in possession by an Apprentice falconer could not be imprinted on humans or a nestling; may be a juvenile raptor less than one year old that is capable of flight; and would need to be trained in the pursuit of wild game and used in hunting. Apprentice falconers would have to have their facilities inspected and certified after passing the exam, and prior to a license being issued. Apprentice falconers would be required to have flown raptors in possession for at least 4 months in each year as a prerequisite for advancement to the General class.
- The minimum age of a General falconer would now be 16 years. If applicant is under 18, a parent or legal guardian must co-sign the application and would be legally responsible for activities of the General falconer. General falconers could possess any captive-bred or hybrid of any species of raptor they are authorized to possess, except listed species or eagles. General falconers are allowed to possess up to three raptors, increased from two in current regulations, of which only two can be wild.
- Master falconers would be allowed to possess up to five wild raptors, increased from three in current regulations, and may possess any number of captive-bred or hybrid raptors. Master falconers would be able to possess any captive-bred or hybrid raptor species they are authorized to possess, except listed species. Golden eagle, white-tailed eagle and Steller's sea-eagle could be possessed with proof of experience and subsequent Department approval. Master falconers who wish to obtain an eagle must send a request with proof of experience working with eagles or other large raptors, and two letters of recommendations.
- Falconers would be allowed to possess golden eagles either by obtaining from a rehabilitation facility, captive-breeder, or importing them into California. Golden eagles are not allowed for capture from the wild in current regulation because of the species Fully Protected status (Fish and Game Code Section 3511). Federal regulations allow obtaining golden eagles from a rehabilitation facility, captive-breeder, or importing them into California, in addition to allowing capture from the wild.
- For General and Master falconers, only nestlings or juvenile raptors less than one year old and capable of flight could be wild-caught; except American kestrel or great horned owl may be captured at any age.

- Licensees would be required to keep falconry records for 5 years. Licensees would be required to notify the Department within 30 days when there is any change of name or mailing address, and 5 days when there is a change in facility address.
- Reporting requirements in the proposed regulations have changed substantially in part due to the Service's new 3-186A electronic reporting database. Licensees would now be required to report acquisitions, releases, transfer, loss, escape, and death of a falconry raptor to this electronic database in addition to reporting to the Department. Reporting would be required within 10 days of the event.
- New regulations would specify when a licensee is required to be at the site of capture, and when he/she is exempt from being present at the site of capture.
- Current regulations specify seasons for capture for passage and eyas (nestlings not capable of flight) raptors. Proposed regulations would eliminate capture seasons and allow capture year-round.
- If a licensee captures a raptor with a band, research marker, or transmitter he/she would now have to notify the federal Bird Banding Lab. If the raptor has a transmitter, the raptor could be temporarily held while the licensee attempts to contact the researcher. If the researcher cannot be contacted or does not want the transmitter, the licensee could keep the raptor and transfer it to his/her falconry license.
- The licensee could add a raptor injured during trapping to his/her license and must have the raptor immediately seen by a qualified veterinarian or rehabilitation facility. Alternatively, a licensee could give the raptor to a rehabilitation facility and not have it added to their falconry license, but the licensee would still be responsible for costs of rehabilitation.
- In the case where a non-target raptor is incidentally captured, a licensee would be required to immediately release the raptor.
- A licensee would not be able to capture raptors or practice falconry on public lands where it is prohibited, on private property without written permission from the landowner or tenant, or on tribal government lands without written permission.
- New regulations specify requirements and limitations of transferring a falconry raptor, including: reporting requirements, in the case of the death of a licensee, temporary transfer to a licensed falconer, temporary transfer to a non-licensed person, time limitation of temporary transfer to a licensed falconer, and time limitations and restrictions of temporary transfer to a non-licensed person. A licensee could permanently transfer a raptor that they are allowed to possess from a rehabilitation permit to a falconers permit. Transfer would be at the discretion of the rehabilitator. Licensees could also temporarily possess raptors from rehabilitation facilities to assist in conditioning raptors for release back into the wild for up to 180 days without transferring the raptor to his/her falconry license.
- A nonresident or non-U.S. citizen could import a falconry raptor as long as importation of that species into the United States is not prohibited, and he/she has met all permitting requirements of his/her country of residence. Import of raptors, including exotic raptors, would be subject to other state

and federal laws. Written authority to export raptors from the originating state or country, along with a health certificate for the raptor, would need to be submitted to the Department prior to importing a raptor.

- Release of wild raptors back into the wild could be done during the appropriate time of year and in appropriate habitat. Falconry bands would be removed prior to release and seamless bands would remain attached.
- Hacking (a soft-release method) would be allowed to condition raptors for release back into the wild and for conditioning young raptors to hunt.
- A licensee must notify law enforcement in the case of theft of a falconry raptor.
- Instructions for handling a falconry raptor carcass would be added.
- If a falconer encounters a falconry or exotic raptor flying free in the wild, he or she could recapture the raptor and attempt to find the person who lawfully possessed the raptor. If attempts are unsuccessful to locate the person who lawfully possessed the raptor, then a falconer could choose to keep the raptor, if it is allowed by his or her falconry class, and report capture to the 3-186A electronic reporting system and to the Department. If neither party wishes to keep the raptor, disposition of the raptor would be at the discretion of the Department.
- No person would be able to purchase, buy, sell, trade or barter wild raptors or any parts thereof including but not limited to feathers. A licensed falconer could receive feathers from another person who can legally possess them, donate feathers to anyone who can legally possess them, or keep the feathers as long as the licensee has a valid falconry license. A licensee would be able to purchase, buy, sell, trade or barter captive-bred, hybrid or exotic raptors marked with seamless bands to other licensed falconers who are authorized to possess them.
- New regulations would specify other uses of falconry raptors if all appropriate state and/or federal permits are in place, including education, exhibiting, propagation, and abatement. Regulations specify which classes of falconers can conduct these activities, what limitations are, and fees that can or cannot be charged. A wild-caught raptor could be used for education and exhibition, but the raptor would have to have been used in falconry for at least two years prior to transfer to another permit type. A raptor could be permanently transferred from a falconry license to a federal Raptor Propagation Permit if it is used for propagation eight months or more in a regulatory year in captive propagation.
- Captive-bred raptors listed under MBTA would be banded with seamless bands. Falconers could use ISO (International Organization for Standardization)-compliant microchips that they supply themselves on raptors in addition to bands, and the ISO number would be reported via the 3-186A online reporting database. The Service would only supply the ISO-chip for Northern goshawks and only if the raptor cannot wear bands for health reasons. Bands could not be altered, counterfeited or defaced, except that a licensee may remove tab or smooth the surface. Bands could not be intentionally removed from a falconry raptor except by agency staff. Lost or removed bands would be reported to the Service and the Department within 5 days. If a band is lost or removed, a licensee would be required to re-band the raptor and report via the 3-186A online

reporting database within 10 days. The Department could exempt the banding requirement if a raptor is documented to have health issues related to the band.

- The Service's falconry regulations specify standards that indoor and outdoor facilities must meet. These standards are referenced in proposed regulations, including safety concerns from predators, set-up and requirements of facilities (e.g. perches, sunlight and water, room to fully spread its wings or fly), housing raptors together, types of facilities that can be used to house raptors, and keeping raptors out in the open or inside a residence.
- A licensee would need to have jesses (thin straps to tether a raptor) or other materials and equipment to make them; leash; swivel; bath container; and appropriate scales or balances for weighing raptors in possession.
- Falconry facilities would be inspected and certified prior to issuance of a license, and be maintained to house falconry raptors. Unannounced inspections would be authorized in proposed regulation. If a licensee's facilities are not on property owned by the licensee, the licensee shall submit to the Department's License and Revenue Branch a signed and dated statement indicating the property owner agrees that the falconry facilities and raptors may be inspected by the Department without advance notice.

New regulations:

- Definitions of terms would be included to clarify the meaning and purpose of these terms used within regulation.
- Any state- or federally-listed threatened or endangered species incidentally injured by a falconry raptor would be taken to the nearest wildlife rehabilitation facility. In existing regulations, falconers are required to remove the listed species from the raptor and leave onsite. There was no provision in existing regulations if the raptor only injured rather than killed the prey. This change would allow immediate care and rehabilitation for injured listed species.
- To clarify who may apply for a falconry license, new language would designate an applicant as either a California resident applying for his/her first license, California resident applying to renew his/her license, residents or nonresidents applying to renew a lapsed license, or a licensed falconer from another state or country in the process of establishing permanent residency in California.
- To clarify the application process, new language would describe how to apply for a falconry license. This is to eliminate ambiguity in the existing application and licensing process for falconers wishing to obtain or renew a license.
- Falconry forms would be referenced. Revision of existing forms and development of new forms will be addressed in a separate regulatory package to amend Title 14, Section 703, CCR. To maintain concurrence with proposed regulations, current forms (FG362 (Rev 9/95), FG363 (Rev 9/95), FG364 (Rev 1/96), and FG364a (Rev (1/96))) would be revised and

renamed and five new forms (FG360b, FG360, FG360h, FG360d, and FG360i) would be developed. Capture seasons would be eliminated in proposed regulation and therefore would not be referred to in forms. Reporting requirements would be adjusted in proposed regulation by no longer requiring falconers to report topographic map, Township, Range, Section, or UTM's of capture site location. Instead, Latitude, Longitude, site description, and capture methods would be described. This information is more easily obtained by licensees using internet based mapping. Reporting requirements for capture, release and recapture would be adjusted to better represent the data the Department needs for maintaining the program and ensuring conservation of affected species. These data would allow the Department to monitor the location and level of capture throughout the state to assess any potential impact of falconry practices. Apprentice falconers would also be required to report how many months they flew each raptor in possession to comply with federal regulations. Because Apprentice falconers would be required to fly their raptor at least 4 month a year, this data is needed to assess proficiency and for advancement to the General class. Random drawings would be new to California for residents and nonresidents alike, therefore the nonresident falconers wishing to capture wild raptors are now informed of the random drawing for Northern goshawk in the Tahoe Basin, and prairie falcons statewide. The application for a nonresident capture of a wild raptor also includes a payment section.

- The process of obtaining a license for falconers from another state who wish to establish permanent residency in California would be clarified to eliminate ambiguity in the application and licensing process for nonresident falconers wishing to obtain a license.
- The population size or trend, legal or special status, of each species of raptor in California was assessed to determine levels of removal from the wild that would provide for sustainable populations. In addition, other ongoing threats to the population, and a species use in falconry practices were considered. This full assessment is described in the Draft Environmental Document for the practice of falconry in California. Due to this assessment, one species would be eliminated for wild capture – the ferruginous hawk, and two species added – red-shouldered hawk and barred owl. Therefore the number of allowed species would increase from nine in existing regulations, to 10 in the proposed regulations. The ferruginous hawk would be eliminated due to its uncertain or declining population in its northern range and its limited use in falconry. Red-shouldered hawk and barred owl would be added because both species are experiencing stable or increasing population trends in California.
- Due to the increased oversight by the Department and proposed revisions to regulations, new fees would be developed to recoup costs associated with running a more complex falconry program in California. Definition of these fees would be included in regulation: a license application fee (existing), examination fee (new), inspection fee (new), re-inspection fee (new), administrative processing fee (new), drawing application fee (new), and special raptor capture permit fee (new). Setting of fees via amending

Title 14, Section 703, CCR, will be addressed in a separate regulatory package.

- In existing regulation, the ability of the Department to deny, suspend, or revoke a falconry license was inadequate and lacked clarity. New language would better define the Department's ability to take such action. Instructions for the licensee would also be added describing how to appeal a denied, suspended, or revoked license.
- To better track the details of capture and release data reported to the Department, reporting would include information about the county of capture/release, date of capture/release, a description of the capture/release site, description of the capture method, species information (e.g. age, sex), and Latitude/Longitude coordinates or capture/release site. The topographic map that was required for some species in current regulation would be eliminated due to its repetition with coordinates that would be required. Reporting requirements for capture, release and recapture would be increased to provide data the Department needs to manage the program. Tracking data such as this is important for monitoring the locations and level of capture throughout the state, and assessing the potential impact of falconry practices.
- To allow the Department to track the extent of game and nongame species taken by the sport of falconry, as it does for other hunting methods, new regulations would require a licensee to submit an annual report summarizing the number and type of prey species taken while hunting, counties hunted, and raptors used in hunting during the most recent license year upon license renewal.
- As allowed by federal falconry regulations, capture of wild raptors by nonresidents would be limited to one wild raptor per nonresident per year. Issuance of a capture permit would be at the Department's discretion, but if a permit is issued the nonresident must report on the outcome of capture whether successful or not. Nonresidents that request to capture species with capture quotas would need to submit an application for the random drawing and compete with resident falconers who enter the drawing.
- The capture of Northern goshawk from the Lake Tahoe Basin is currently prohibited in existing regulations due to historic declining populations and previous population studies in that region. Long-term population studies have concluded in the Tahoe Basin. Population abundance in the Tahoe Basin is uncertain today due to limited monitoring efforts. However, the goshawk population seems to be stable statewide. Because conflicts with research in the Tahoe Basin is no longer an issue, and because goshawk populations are stable statewide, the Department recommends new regulations to permit the capture of Northern goshawk in the Lake Tahoe Basin with a quota of one goshawk annually. The full assessment for Northern goshawk is described in the Draft Environmental Document for the practice of falconry in California.
- Wild capture quotas would be added for prairie falcons, thereby limiting annual capture to 14 individuals. A quota was determined for this species by emulating methodology used in the Service's Environmental Assessment for falconry in the United States. The methodology determined maximum capture level for each raptor species based on

population estimates, demographic data, proportion of juveniles in the population, and current falconry capture levels. The full assessment for prairie falcons is described in the Draft Environmental Document for the practice of falconry in California.

- Capture of wild merlins would be limited to the non-breeding season, August 15 to February 28, when these raptors are most abundant in California as migrants. The breeding season would be excluded due to rare, but unconfirmed, breeding records of merlin within California. Because breeding merlins are rare, even limited capture of nestlings or juveniles during the breeding season may impact California's breeding population.
- To equitably implement capture quotas for prairie falcon statewide and Northern goshawk in the Tahoe Basin, the drawing application, random drawing process through the Department's Automated License Drawing System (ALDS), and permitting processes are defined.
- A licensee would be able to intentionally release only a native, wild caught raptor to the wild in California. To ensure that wild raptors are released in the appropriate habitat falconers would be required to release at a location near the site that raptor was originally captured. If the original site cannot be accessed or no longer exists, then the raptor would be released in appropriate habitat for that species of raptor. A quick release back into the wild can be stressful to a raptor, and level of stress depends on amount of time the raptor has spent in captivity. Ensuring proper habitat will help limit this stress to the extent possible.
- To prevent the permanent loss of hybrid, captive-bred, or exotic raptors into the wild during hacking or when flown free, each hybrid, captive-bred, or exotic raptor would need to have two attached functioning radio transmitters when flown. Attaching radio transmitters would assist the falconer in relocating a lost raptor more quickly. A quick retrieval of a lost raptor benefits the raptor by limiting exposure time in the wild, and would also help ensure that hybrid, captive-bred, or exotic raptors do not colonize or breed with native wild birds.
- Raptor carcasses, other than golden eagles, could be delivered to the Department if the carcass is frozen and if the licensee gains permission from the Department prior to delivery. Federal falconry regulations note that a carcass may be delivered to the state agency. Requiring that a carcass be frozen would ensure that the carcass does not further degrade and/or spread disease/toxins. Requiring that the falconer gain permission from the Department prior to delivery would ensure the Department has space or need for such a carcass.
- Federal regulation requires that only Northern goshawk, Harris's hawk and peregrine falcon be banded with permanent, nonreusable, numbered Service leg bands. To ensure all falconry raptors are banded and can be tracked via their band number, the Department would require all wild raptors be banded. Banding all raptors will aid the Department in tracking raptors as their disposition changes over time. In particular, this would benefit Department Law Enforcement Officers when conducting inspections.

- Currently, the Service distributes bands to falconers. The Department would now be the distributor via its License and Revenue Branch or regional offices. This would be the only means for falconers to obtain the bands.
- Inspection of facilities would be required for a new applicant, licensee renewing a lapsed license, or licensee that move to a new address, however, the Department has determined that the authority for inspections needs to be with the Department solely. Therefore inspections would now only be conducted by Department Law Enforcement Officers, rather than sponsors authorized by the Department.

Repeal Section 678

The purpose for repealing Section 678 is to re-organize and clarify regulations regarding captive propagation. The regulations in Section 678 will now be incorporated in the revisions to Section 670 regulations.

(c) Authority and Reference:

Authority: Fish and Game Code Sections: 200, 202, 203, 355, 356, 395, 396, 398, 710.5, 710.7, 713, 1050, 1530, 1583, 1802, 3007, 3031, 3039, 3503, 3503.5, 3511, 3513, 3800, 3801.6, 3950, 4150, 10500. Reference: Fish and Game Code Sections: 395, 396, 713, 1050, 3007, 3031, 3503, 3503.5, 3511, 3513, 3801.6. Title 50, Code of Federal Regulations, Part 21.29.

(d) Specific Technology or Equipment Required by Regulatory Change:

Radio or GPS telemetry devices will be required by licensees to track non-native species used in falconry. Equipment used for confining, holding, and flying falcons must meet federal standards under the State regulations. If State inspection reveals falconry equipment does not meet federal standards, the licensee will be required to change the equipment used to meet the standards.

(e) Identification of Reports or Documents Supporting Regulation Change:

State and federal falconry regulations require reports from licensed falconers regarding the capture and possession of raptors. The following reports provided data used in the development of the regulation changes:

- [Draft Environmental Document, for Section 670, Title 14, California Code of Regulations Regarding Falconry Regulations](#)
- [Economic Impact Analysis](#)
- [Title 50 Code of Federal Regulations Section 21 \(50 CFR 21\)](#)

(f) Public Discussions of Proposed Regulations at the time of the Notice of Intent to Publish:

- A public scoping meeting for the Draft Environmental Document was held in November 2010 during which comments were received.
- An online survey was made available from September 2010 to February 2011 to receive further input from the public.
- A dedicated website was developed to give the public information on the process, announce upcoming meetings, provide links to other related material, and allow viewing the current falconry regulatory process
- A dedicated email account was setup to receive public comment and has remained open throughout the entire process.
- A brief update was given at the November 2011 Fish and Game Commission Meeting.
- Department staff attended The California Hawking Club board meeting to give brief status of regulation process and answer any questions.
- A public phone conference was conducted on April 27, 2012 to give a brief status update of the regulation process and answer any questions related to the environmental process.
- A focused call with falconers representing the major falconry organizations was conducted on August 10, 2012 to go over major proposed changes to the regulations and seek input.
- A scoping meeting was held at the Fish and Game Commission meeting on October 3, 2012.

IV. Description of Reasonable Alternatives to Regulatory Action: Alternatives to Proposed Regulation Changes

(a) Alternatives to Proposed Regulation Changes

Two alternatives related to falconry alternatives (or options) to the proposed regulation change were evaluated.

Alternative 1 - No Change in California Falconry Regulations

Falconry is conducted with raptors that are protected and managed under federal authority from the Migratory Bird Treaty Act. The Service modified their regulations and for falconry to continue in California, complying state regulations must be approved and certified, by publishing in the Federal Register, by the Service by January 1, 2014. These changes to federal regulations require changes to State regulations. No action on changing State regulations would be a violation of federal law if the State continues to allow falconry after January 1, 2014. The Department's mission, along with conserving natural resources, is to maintain opportunities for recreational use of wildlife. Since falconry is a deep-rooted tradition, it is recommended this alternative not be considered so that falconry in California can remain legal.

Alternative 2 - Strict Adoption of Federal Regulations

This alternative would be to replace state regulations with the specific federal regulations. This alternative would ensure compliance with the federal requirement; however, it would not fully protect the natural resources of

California in accordance with the Department's mission. For example, a more restrictive regulation is needed in cases where species have or need more protection in California than on a national level, or where populations of affected species in specific locations are declining or experiencing other significant pressures. In addition, federal regulations allow the use of two Fully Protected species, the Peregrine Falcon and Golden Eagle. If the state adopted federal regulations strictly it would be out of compliance with Fish and Game Code Section 3511.

Since 1996, when State falconry regulations were last updated, changes have occurred in populations of raptor species used in falconry, special status designations, habitats required by these species, and numbers of falconers taking species from the wild. If the State were to only adopt federal regulations without revising existing State regulations, these changes would not be addressed. Since it is the mission of the Department and in the best interest of the falconry community to maintain healthy populations of all species involved, the Department does not recommend this alternative.

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to the affected private persons than the proposed regulation. Again, no action on changing State regulations would be a violation of federal law if the State continues to allow falconry after January 1, 2014. Any proposed regulatory changes for the practice of falconry need to be thoroughly vetted with the Service prior to January 1, 2014.

(b) Consideration of Alternatives:

50 CFR 21.29 requires that before falconry may be practiced in any state, that state must have their falconry regulations certified by the Service by publishing in the Federal Register no later than January 1, 2014 so that falconry licenses may be issued under its own laws and regulations. State falconry regulations must meet the federal standards established under 50 CFR 21.29. If the January 1, 2014 deadline is missed, residents of states that have not had their state regulations certified by the Service will not be allowed to practice falconry. To comply with the January 1, 2014 deadline, approved regulations must be submitted to the Service by September 1, 2013.

The Department is proposing to amend 14 CCR 670 to meet the federal requirements; specifically, to comply with establishing and maintaining its own permitting program. In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

The proposed regulation incorporate language from federal regulations, retains some language in existing California falconry regulations, and

develops new regulatory requirements. Proposed regulations would provide the State with an additional level of oversight then it had prior to the federal mandate. Changes in this case would be to add adopted federal standards that previously didn't exist in the State regulations or revised standards that existed as a reference to federal regulations that no longer exist. Some existing State regulations would remain unchanged. However, to fully address the increased oversight of the Department and other California laws and regulations, as well as consider each raptor species population status, some new additions to regulations are proposed in this alternative.

The proposed project is to provide revised or new regulations that meet the current needs of prey species and raptors in California by using the most current scientific data available. In addition to adopting federal standards, this alternative would include adding, removing, or retaining species allowed to be captured, as well as numbers and locations of capture, more stringent reporting requirements, and other requirements that would benefit California's wildlife diversity under current political and environmental conditions.

The Proposed Project would add the following elements to the regulatory package:

- Fees and forms referenced
- Defined examination requirements
- Adjustments to falconry classes
- Adjustments to species allowed for capture from the wild
- Capture quotas for two raptor species
- Reopening the Lake Tahoe Basin for limited Northern goshawk capture
- Limitations on number of wild raptors captured from the wild annually
- Elimination of capture season (except for merlin)
- Allowing the practice of hacking
- Allowing transfer of nonreleasable raptors from rehabilitation permits to falconry permits
- Allowing falconers to assist rehabilitation facilities with conditioning raptors for release into the wild
- Clarification on reporting requirements
- Addition of a annual falconry hunting report requirement

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of the Regulation Changes

Under existing State regulations, capture of raptors from the wild is allowed for nine species. Proposed regulations will eliminate one species for use in falconry, but add two more. The total species with allowed capture from the wild will be 10 under proposed regulation. In addition, the number of raptors (by species) that

could be captured from the wild were assessed using estimated populations numbers in California. Two species are proposed to have capture quotas, thereby limiting number captured from the wild. One species, Northern goshawk, will have an area-specific limitation in the Lake Tahoe Basin. One species, merlin, will have a statewide limitation. These limitations in raptor capture from the wild will ensure this State's raptor resource is not overburdened by falconry practices. In addition, each licensed falconer may capture no more than two raptors from the wild annually.

The effects on the safety and well-being of captive raptors are addressed by federal standards and adopted by State regulations. Under proposed State falconry regulations, Department Law Enforcement Officers must inspect raptor facilities and are allowed to conduct unannounced inspections, Apprentice falconers must be trained and sponsored by more experienced falconers, and an examination will test a new applicant's knowledge of care and handling of raptors. These measures should ensure that there is minimal risk to falconry raptors housed by falconers.

Impacts of falconry on prey species, as well as take of listed species, are addressed by existing State regulations that require all falconers to obtain a hunting license and follow all laws and regulations pertaining to hunting. This impact will further be addressed in proposed regulations by requiring detailed reporting of prey species taken, including locations. The proposed regulations will also require falconers to avoid flying raptors in the vicinity of protected species, to avoid allowing raptors to feed on protected species, and guidance for what to do if listed species are killed or injured by a falconry raptor. Any incidental take of protected species must be reported to the State so that adjustments may be made to avoid such take in the future.

Impacts on native populations of raptors or other species from captive raptors lost or otherwise accidentally released into the wild are addressed in proposed regulations through more stringent reporting requirements and Department oversight of falconry activities. In addition, falconers will be required to fly hybrid, exotic, and captive-bred raptors with two functioning radio transmitters so relocation of lost raptor may occur. These provisions are intended to minimize accidental permanent release of captive, non-native or hybrid raptors into wild populations.

The impacts of wildlife viewing, recreational opportunities, aesthetic wilderness areas, and public safety are considered by the Department to be absent or minimal under existing federal and State regulations. There are no proposed regulation changes that address these potential impacts, since the potential impacts are expected to remain minimal.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Considering the small number of permits issued over the entire state, this proposal is economically neutral to business.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed falconry regulations will not have impacts to jobs and/or businesses in California.

Health and Welfare of California Residents: Hunting is an outdoor activity that can provide several benefits for individuals who partake in it and for the environment.

The proposed falconry regulations will not have impacts to worker safety.

Benefits to the Environment: Ensure a sustainable management of raptor populations in California.

- (c) Cost Impacts on Representative Private Person or Business

The Fish and Game Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

The Department of Fish and Game will identify and consider fees for permits, permit applications and facility inspections in amounts sufficient to cover the costs of administering, implementing and enforcing regulations under Section 703, Title 14, California Code of Regulations, in a separate rulemaking, pursuant to Fish and Game Code Section 2150.2

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State.

All costs, such as those incurred for application reviews, processing, issuing permits, maintaining databases, inspections, development and maintenance of a band tracking database, and other administrative or enforcement costs will be fully offset by fees paid by the regulated parties. The Department of Fish and Game must address and propose to revise

the falconry license fee structure under the authority of Section 2150.2, Fish and Game Code, in a separate rulemaking. This additional rulemaking could result in increased revenue from the falconry program. There are no costs or savings with regard to federal funding to the State.

- (e) Other Nondiscretionary Costs/Savings to Local Agencies.

The effects to local agencies are unknown at this time.

- (f) Programs Mandated on Local Agencies or School Districts.

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4.

None.

- (h) Effect on Housing Costs.

None.

INFORMATIVE DIGEST **(Policy Statement Overview)**

Regulations for the practice of falconry are contained in Title 14 CCR Section 670 (14 CCR 670) along with federal regulations in Title 50 Code of Federal Regulations Section 21 (50 CFR 21). These guide the practice of falconry within the state and establish the methods and limits for capture of raptors from the wild for falconry use. Under these regulatory sections, the Department of Fish and Game (Department) issues a license, with certain restrictions and conditions, for the capture, possession and use of wild, captive-bred, or hybrid raptors for the purpose of falconry.

In July 2009, the U.S. Fish and Wildlife Service (Service) revised CFR 50 21.28 and 21.29 to remove federal permitting for falconry. 50 CFR 21.29(b) now requires that before falconry may be practiced in any state, that state must approve the practice by issuing permits under its own laws and regulations and must submit copies of its regulations pertaining to falconry, including falconry permit requirements, to the Service. The state must develop falconry regulations that meet the federal standards established under 50 CFR 21.29. Certification of state regulations must be published in the Federal Register no later than January 1, 2014, at which point the federal permitting program will end and individual states will not be allowed to practice falconry if their regulations have not been approved and certified by the Service. State laws are allowed to be more restrictive than federal standards, but not more permissive.

The regulations, which include proof that the database linkage between the Service and the Department's database is in place, must be submitted to the Service by September 1, 2013.

The Department is proposing that the Commission amend 14 CCR 670 to meet the federal requirements; specifically, to comply with 50 CFR 21.29 by establishing and maintaining a permitting program. Much of California's current falconry regulation language is being modified to some extent. Many changes being proposed are to comply with federal regulation. Some new revisions to 14 CCR 670 are being proposed to the Fish and Game Commission based on input received from the public, as well as the latest scientific information available on the status of the species affected by the practice of falconry and the health of local populations.

The Department is proposing that the Commission repeal 14 CCR 678 to re-organize and simplify the reading of regulations regarding captive propagation. The language from Section 678 would be covered in new Section 670 regulations.

Under existing falconry regulations (Section 670, Title 14, CCR), falconers are allowed to practice falconry in California according to the following specifications:

- General provisions are provided specifying falconry shall abide by Fish and Game Code, Department regulations, federal MBTA, and federal falconry regulations. These laws and regulations can be sent upon request.
- Take of game or nongame animals shall abide by all state hunting laws and regulations.

- Protected animals inadvertently killed by falconry raptors should be removed from the raptor and left on site.
- The Department provides information on the application process. Experience acquired elsewhere is considered during the application process. Persons under 18 require a parent or guardian signature on application.
- Forms FG362 (Rev 9/95), FG363 (Rev 9/95), FG364 (Rev 1/96), and FG364a (Rev (1/96) are referenced.
- Prior to issuance of a license, applicants must take an examination and score 80% or better. Applicants who fail the exam may take it again after 3 months have passed since the last attempt. Applicants with passing scores from another state with federal approval do not have to take the exam in California.
- Classes of licenses are apprentice, general and master.
- The Department may suspend, revoke, or deny issuance or renewal of any falconry license under specified conditions. Licensees may appeal such actions.
- A sponsor must notify the Department upon termination of sponsorship. An Apprentice shall acquire a new sponsor within 60 days.
- Apprentice falconers must submit an annual report on their activities. The report must be signed and dated by the sponsor.
- Prior to issuance of a license, all housing facilities and equipment must be inspected and approved. The Department may authorize sponsors to conduct inspections. The Department may enter the premises of any licensee at any reasonable hour to inspect facilities and equipment.
- Nonresidents may practice falconry in California according to their federal permit.
- Temporary transfer of falconry raptors is allowed according to federal regulation and must be reported to the Service.
- Apprentice falconers may only capture and possess kestrels and red-tailed hawks.
- Raptors may be acquired from wildlife rehabilitation facilities.
- Raptors may be imported with proper documentation and required permits.
- Infertile eggs may be possessed with written notification to the Department.
- Bands may not be removed from raptors, except by a Department employee or person authorized by Department. Bands may not be defaced, altered, or counterfeited. Lost or removed bands must be reported to the Service.
- Only persons with a valid falconry license can remove birds from the wild. Nonresidents may apply to capture a wild raptor and must report to the Department whether successful at capture or not.
- Capture from the wild must be reported within 5 days, and include county of capture and a description of the capture site, and Township, Range, and Section of capture site. A copy of a topographic map, with the capture site clearly indicated, is required for all species except great horned owl, kestrel and red-tailed hawk.
- Raptors that may be captured from the wild include Northern goshawk, Cooper's hawk, sharp-shinned hawk, red-tailed hawk, ferruginous hawk, merlin, American kestrel, prairie falcon and great horned owl.
- Northern goshawks may not be captured from the wild at any time in the Lake Tahoe Basin.
- Eyas birds may only be captured by General or Master falconers and only from May 20 to July 15. At least one eyas bird must be left in the nest. Passage birds may only be captured October 1 to January 31.
- Any marked raptor that was lost or escaped can be captured anytime.

- Replacement period is defined as the 12 month period beginning March 1 of each year.

The Department is proposing to amend 14 CCR 670 to meet the federal requirements; specifically, to comply with establishing and maintaining a permitting program. Much of California's current falconry regulation language is being modified to some extent. Many changes are being proposed to comply with federal regulation. Some new revisions to 14 CCR 670 are being proposed based on comments received during public review, expertise within the Department, as well as the latest scientific information available on the status of the species affected by the practice of falconry and the health of local populations.

The proposed regulatory changes will meet the federal requirements and assist the Department in responsibly implementing a falconry program in California.

The following is a summary of the changes proposed for Section 670, Title 14, CCR:

- Definitions of terms would be included in the regulations to clarify meaning and purpose of these the terms within regulation.
- Falconers would be required to ensure take of state- and federally-listed threatened and endangered species is minimized by not flying raptors near listed species, and will be required to report take of listed species to the nearest Department regional offices or Service office within 10 calendar days of the incident. If listed species are injured during the practice of falconry, the falconer would be required to notify the Department and the Service, and transport an injured animal to a wildlife rehabilitation facility.
- To clarify the application process, new regulations would describe how to apply for a falconry license. The process of obtaining a license for falconers from another state who wish to establish permanent residency in California is also clarified.
- Regulations would allow the Department to recognize a valid falconry license from another state during the application process for a California falconry license.
- Licensees would be required to report acquisitions, releases, transfer, loss, escape, and death of a falconry raptor to this electronic database in addition to reporting to the Department. Information about the county of capture/release, date of capture/release, a description of the capture/release site, description of the capture method, species information (e.g. age, sex), and Latitude/Longitude coordinates or capture/release site would be a requirement to report to the Department. The topographic map that was required for some species in current regulation would be eliminated. Reporting would be required within 10 days of any event. Additionally, Law Enforcement Officers would also need to be notified in the case of theft.
- New licensees would be required to sign a statement stating they are familiar with both federal and state regulations, as well as MBTA, that information submitted is complete and accurate, and that any false statement is subject to cancellation and criminal penalties.
- The application and licensing process would be clarified for residents and nonresidents wishing to obtain a new license in California, renew a current license, or renew a lapsed license.

- New regulations would allow nonresident falconers or non-U.S. citizen falconers to temporarily practice falconry in California and would require them to either maintain temporary housing facilities or utilize a license falconer's facilities.
- The ability for the Department to deny, suspend, or revoke a falconry license would be defined. Instructions for the licensee would also be added on how to appeal such action.
- Current falconry forms would be revised, and new ones developed as a means to implement the state-run falconry program.
- Falconry forms would be referenced. Current forms (FG362 (Rev 9/95), FG363 (Rev 9/95), FG364 (Rev 1/96), and FG364a (Rev (1/96))) would be revised and renamed. Five new forms (FG360b, FG360, FG360h, FG360d, and FG360i) would be developed. Capture seasons would be eliminated and therefore would not be referred to in forms. Reporting requirements would be adjusted; therefore falconers would no longer report topographic map, Township, Range, Section, or UTM's of capture site location. Instead, Latitude, Longitude, site description, and capture methods would be described. Apprentice falconers would also be required to report how many months they flew each raptor in possession. The nonresident falconers wishing to capture wild raptors would now be informed of the random drawing for Northern goshawk in the Tahoe Basin, and prairie falcons statewide. The application for a nonresident capture of a wild raptor would also include a payment section.
- Falconers would be required to submit an annual report summarizing the number and type of prey species taken while hunting, counties hunted, and raptors used in hunting during the most recent license year upon license renewal.
- Conditions would be defined for importation of raptors into California.
- Specifications for the sponsorship program for an Apprentice falconer would be clarified, including qualifications, roles and responsibilities of the sponsor; requirements for being a sponsor; duration of sponsorship; and instructions for what to do in the case of sponsorship termination.
- Apprentice falconer age limit would decrease to 12, from 14. General falconer age limit would decrease to 16, from 18. Apprentice falconers would only be able to possess raptors that are not imprinted on humans, no nestlings or juveniles less than one year old capable of flight, and they would train raptors in the pursuit of wild game for hunting. Apprentice falconers would advance to General Class if he/she has been at the Apprentice level for at least 2 years, including maintaining, training, flying, and hunting with the raptor for least 4 months in each regulatory year. Apprentice falconers would have their facilities inspected and certified after passing the exam, and prior to a license being issued.
- General falconers would advance to Master Class if they have been at the General level for at least five years.
- General falconers would be able to possess up to 3 raptors total (increased from 2), of which only 2 can be wild caught. Master falconers would be able to possess up to 5 wild caught raptors (increased from 3), and any number of captive-bred or hybrid raptors. For General and Master falconers, only nestlings or juvenile raptors less than one year old and capable of flight would be able to be captured from the wild; except American kestrel or great horned owl would be able to be captured at any age. General and Master falconers could possess any captive-bred or hybrid raptor. However neither class could possess listed species, and only Master class could

possess eagles. Golden eagles could only be possessed if they are obtained from a rehabilitation facility, captive-breeder, or if they are imported into California.

- Falconry records would be kept for at least 5 years.
- Capturing raptors from the wild would be able to occur anytime during the year, except for merlin. A falconer would only be able to capture up to 2 wild raptors from the wild annually. A nonresident falconer would only be able to capture only 1 wild raptor, but must apply with the Department to do so. One raptor species would be eliminated for wild capture – the ferruginous hawk, and two species would be added – red-shouldered hawk and barred owl. The Lake Tahoe Basin would be re-opened for capturing Northern goshawk from the wild, with a capture quota of one goshawk annually. Wild capture quota would be added for prairie falcons limiting annual capture to 14 individuals annually.
- Capture of merlins from the wild would be limited to the non-breeding season, August 15 to February 28.
- Capture quotas would be implemented for prairie falcon statewide and goshawk in the Lake Tahoe Basin via a random drawing process through the Department's Automated License Drawing System (ALDS).
- Conditions for release of raptors back would be included.
- In the case of capturing wild raptors, a falconer would be required to be at the site of capture unless they are deemed exempt. If marked raptors are captured, regulations would clarify the process for determining status of that raptor. If raptors are injured in the capturing process, regulations would note what a falconer is required to do. If non-target raptors are captured, the falconer would release the raptor immediately. A falconer would only be able to capture on public lands where capture is allowed, and on private or tribal lands if they gain permission.
- New language would be added that specifies requirement and limitations of transferring a falconry raptor. When, how and under what circumstances temporary and permanent transfers may occur would be defined.
- If a raptor with a research band or marker is captured by a falconer, new language would specify action to take in notifying the Bird Banding Lab and/or the researcher.
- A falconer would be allowed to add a raptor with a research band or marker, or a raptor injured during trapping to his/her license. An injured raptor may also be given to a rehabilitation facility.
- Non-target raptors would be released immediately at the site of capture.
- Hybrid, captive-bred, or exotic raptors would have two attached functioning radio transmitters when flown free.
- Falconers would be able to obtain raptors from rehabilitation facilities. Falconers would also be able to temporarily possess raptors from rehabilitation facilities to assist in conditioning raptors for release back into the wild.
- Hacking would be allowed to condition raptors for release back into the wild and for conditioning young raptors to hunt.
- Language would be added that defines options for what to do with a falconry raptor carcass, and what to do if a falconry raptor or exotic is encountered flying free.
- Purchase, buy, sell, trade or barter of wild raptors or parts would be restricted. Gifting and donating wild raptors and parts is allowed. Purchase, buy, sell, trade or barter would be allowed for captive-bred, hybrid, and exotic raptors.

- With some limitations and under certain circumstances, other uses of falconry raptors would be allowed, including education, exhibiting, propagation, and abatement, but only if other required permits are in place.
- Captive-bred raptors listed under MBTA would be banded with seamless bands. Language notes specific restrictions and condition for banding placement, removal, reporting, or exemption on falconry raptors. All wild raptors would require bands. The Department would distribute bands via the License and Revenue Branch or regional offices. The Department would be able to exempt the banding requirement if a raptor is documented to have health issues related to the band.
- Falconers would be able to use ISO-compliant microchips that they supply themselves on raptors in addition to bands. The Service would only supply the ISO-chip for Northern goshawks and only if the raptor cannot wear bands for health reasons.
- The Service's falconry regulation stipulates standards that indoor and outdoor facilities must meet, as well as equipment that should be on hand. These standards would be referenced and defined in proposed regulations. Falconry facilities would be inspected and certified prior to issuance of a license. Unannounced inspections would be able to take place as needed with pre-authorization from falconer and/or landowner. Inspection of facilities would be required for a Apprentice falconers, a new applicant, licensees renewing a lapsed license, and licensees that move to a new address. Inspections would be conducted by Department Law Enforcement Officers.
- New fees associated with the increased oversight of the Department would be defined. Setting of fees will require revision of Title 14, Section 703.