

STATE OF CALIFORNIA
FISH AND GAME COMMISSION

ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 670
Title 14, California Code of Regulations
Re: Falconry

V. Update:

During initial review of the final statement of reasons by the Office of Administrative Law (OAL), there were a number of necessity and clarity concerns (**shown in bold**), requiring additional response.

1. Necessity

1.1 Existing (a)(1) requires falconers to carry an original falconry permit and “all additional documentation or legible copies thereof that authorize him or her to practice falconry in California.” Amended text changes this to “a valid original falconry license, a valid original hunting license, and any required stamps.” The reasons for including the specific documents are explained in the record, but not why copies are no longer allowed. Also, see clarity issue 2.1 below.

The former language included “additional documents” which potentially could have included copies. Hunters and fisherman are required to carry original. It is reasonable to extend this same requirement to falconers.

Section 1054.2, Fish and Game Code reads, “Every person while engaged in taking any bird, mammal, fish, amphibian, or reptile shall have on his or her person or in his or her immediate possession, or where otherwise specifically required by law to be kept, any license, tag, stamp, or permit that is required in order to take the bird, mammal, fish, amphibian, or reptile. In the case of a person diving from a boat, the license or permit may be kept on the boat, or in the case of a person diving from shore, the license or permit may be kept within 500 yards of the shore.”

Section 700, Title 14, reads, “a) Possession of Sport Fishing License: Every person, while engaged in taking any fish, amphibian or reptile, shall have on their person or in their immediate possession a valid sport fishing license, except when diving as provided in Section 7145 of the Fish and Game Code. (b) Possession of Hunting License: Every person, while engaged in taking any bird or mammal shall have on their person or in their immediate possession a valid hunting license.”

1.2 Adopted (c)(1)(B): “If an animal is killed as a result of an unauthorized take, the licensee may allow a falconry bird to feed on the kill but the licensee

shall not possess the animal and shall leave the kill at the site where taken.” ISR does not explain why this provision is necessary.

This language was added according to Federal Regulations, 50 CFR §21.29 Falconry standards and falconry permitting. Section (f)(19) of these regulations reads, “Prey item killed by a falconry bird without your intent, including an animal taken outside of a regular hunting season. (i) You may allow your falconry bird to feed on the animal, but you may not take the animal into your possession.”

1.3 Existing signed certification requirement in (e)(2)(D) said, “I am not currently under any Fish and Wildlife license or permit revocation or suspension, and there are no other legal or administrative proceedings pending that would disqualify me from obtaining this license.” It’s being changed to: “I certify that there are no pending or previous legal or administrative proceedings that could disqualify me from obtaining this license.” There is no explanation for why previous incidents have been included. Also, see clarity issue 2.2 below.

Previous incidents may have been cause for a violation to the certifications of both federal and state standards required when signing the falconry license. 50 CFR §21.29 requires falconers to certify they are familiar with specific federal regulations. 50 CFR §21.29 reads, (g)(3)(ii) s “An original, signed certification that you are particularly familiar with §10.13 of this subchapter, the list of migratory bird species to which the Migratory Bird Treaty Act applies; part 13 of this subchapter, general permit regulations; part 21 of this subchapter, migratory bird permits; and part 22 of this subchapter, eagle permits. “The certification can be incorporated into tribal and State application forms, and must be worded as follows: “I certify that I have read and am familiar with the regulations in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, and that the information I have submitted is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.”

And the signature line of the California license states “I certify under penalty of perjury under the laws of the State of California that all information on this document is true and correct and that I meet the requirements for these licenses. I understand it is unlawful to make any false statement in this application or to use or possess a license obtained by fraud or deceit (Fish and Game Code §§1052(b) and 1054).”

Under 14 CCR 670(e)(9) the applicant may have lost the right to hold a license through a conviction in court; if that were to occur, the applicant would have superior knowledge about the conviction. Requiring the applicant to certify that this has not occurred gives the department a basis to act on the application.

Subsection 670(e)(9) lists the type of violations that may be considered:

~~(9) SUSPENSION AND REVOCATION~~ Suspension and Revocation. Any license issued pursuant to these regulations may be suspended or revoked at any time by the department for failure to comply with the Fish and Game Code or regulations adopted pursuant to the Fish and Game Code related to raptors, Fish and Game Code Section 1054, or Penal Code Section 597. If the licensee has been convicted in a court of competent jurisdiction of violating one of these provisions, the suspension or revocation shall take effect immediately if the violation pertains to conduct that threatens native wildlife, agricultural interests of this state, the welfare of the birds, or the safety of the public, or if the licensee has been previously convicted of violating the provisions described above or has had his or her license previously suspended or revoked. If the licensee has not been convicted, the suspension or revocation shall take effect when the time to request an appeal ~~pursuant to subsection (e)(11)~~ as described herein has expired. A timely request for an appeal will stay the department's suspension or revocation if the licensee was not convicted as described above.

1.4 Existing (e)(6)(A) sets rules for apprentice falconers. New text in (e)(6)(A)4 states: "An apprentice falconer must maintain written proof of legal acquisition." No explanation for this new requirement is given. Also, see clarity issue 2.3 below.

1.4.1 Same as above for general falconers in (e)(6)(B)2.

1.4.2 Same as above for master falconers in (e)(6)(C)1 (raptors) and (e)(6)(C)2 (eagles).

Each falconry class (Apprentice, General, and Master) has limitations regarding what species and how many of each they can possess or capture from the wild. Every time disposition of a raptor changes (e.g. one is caught from the wild, is released back to the wild, is transferred between falconers, etc.) the falconer has to report this to the Department. This statement in (e)(6)(A), (e)(6)(B), and (e)(6)(C) ensures that falconers keep all acquisition paperwork on any bird they have in possession, according to specific requirements of their class. The need for this is to better ensure compliance in the event inspections by law enforcement were needed.

Falconers in any other state have to report to both the feds and their state. California includes electronic falconry reporting (federal regulations CFR §21.29(b)(2)(ii)) at <http://www.wildlife.ca.gov/FalconryReporting>. This ensures the state is automatically reporting the same information to the feds. Further, federal regulations, CFR §21.29(e)(6) "Acquisition, transfer, loss, or rebanding of a raptor" subsection (iii) states "You must keep copies of all electronic database submissions documenting take, transfer, loss, rebanding or microchipping of each falconry raptor until 5 years after you have transferred or lost the bird, or it has died."

1.5 Existing (g)(13) says a licensee can only capture birds on private property or tribal land with written permission, which he or she must carry when practicing

falconry. New text says it must be the “original signed written permission.” No explanation as to why the old text needed to be modified in this way.

Pursuant to Fish and Game Code Section 2016, “It is unlawful to enter land for the purpose of discharging a firearm or taking or destroying a mammal or bird, including waterfowl, on that land, without having first obtained written permission from the owner, the owner’s agent, or the person in lawful possession of that land . . .” The only proof adequate to demonstrate compliance would be original written permission. Unfortunately, permission letters have been fraudulently altered and copied. This necessitates the requirement of possessing the original signed permission for inspection by law enforcement. This is a matter of consistency because the same statute is applicable to all hunters. Not just falconers.

1.5.1 Same as above for (e)(5) – copies used to be OK, now must be original only.

~~(B) 1. A nonresident licensed falconer or non-U.S. citizen licensed falconer may fly raptors held for falconry by practice falconry with raptors from a licensed California falconer, provided that signed and dated written permission authorization is given to the nonresident or non-U.S. citizen by the licensee. ~~This~~ The original written authorization must be carried with him/her while flying or transporting the licensee while in possession of the raptor.~~

Written permission should never have implied that a copy was acceptable. For the reasons provided under 1.5 above, this change was made to clarify written authorization could not be satisfied with a copy. Wildlife officers in the field would have more difficulty determining whether authorization was fraudulently produced if only a copy was available.

1.6 Existing (h)(56)(C) says a licensee may not intentionally and permanently release a non-native bird to the wild in CA, unless authorized by the department. This action deletes the part about department authorization in proposed text (h)(5)(C). There is no explanation regarding why the department can’t or won’t authorize this anymore.

~~(C) A licensee may not intentionally and permanently, release a non-native raptor, hybrid, or native captive-bred raptor to the wild in California, unless authorized by the department.~~

CFR 21.29 e(9) states, You must follow all applicable State or territorial and Federal laws and regulations before releasing a falconry bird to the wild. (i) If the raptor you wish to release is not native to the State or territory, or is a hybrid of any kind, you may not permanently release the bird to the wild. You may transfer it to another falconry permittee. (ii) If the species you wish to release is native to the State or territory and is captive-bred, you may not release the bird to the wild unless you have permission from the State, tribe, or territory to release the bird. If you are permitted to do so, you must hack the bird (allow it to adjust) to the wild at an appropriate time of year and an appropriate location. You must remove its falconry band (if it has one) and report

release of the bird by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.”

There are no known circumstances that the Department would authorize release of raptors into the wild that are hybrid, non-native or were bred for falconry purposes, so there is no need for the statement that suggests that the Department may give such an authorization. The deleted language does not provide any standard for authorizing such a release and such releases could have negative biological consequences.

1.7 New (h)(8)(E) says the following about mounted (stuffed) raptors:

1. Within 30 days of the expiration of a license, the licensee shall return the mounted raptor to the department.
2. Within 30 days of the death of the licensee, the estate shall return the mounted raptor to the department.
3. In either event, the licensee or the estate shall contact the department’s License and Revenue Branch. The department’s Wildlife Branch will determine the disposition of the mounted raptor.

The ISR restates the text in order to provide the purpose of the adoption, but says nothing to explain the need for the new text. Why does the department get the bird back? Why 30 days?

According to the Migratory Bird Treaty Act of 1918, individuals are prohibited from taking, killing, or keeping any native bird, its parts, or its nest, without a permit or license. All raptors native to the U.S. are covered by this law. A Special Purpose Possession Permit and/or Endangered Species Permit (depending on species), is required under the Migratory Bird Treaty Act to keep raptors.

In addition, Section 3503.5, Fish and Game Code, states, “It is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.”

The Department would like to allow falconers to keep mounted specimens of the birds they used in falconry, but only while they remain engaged in falconry with an active license. No other person may possess any part of any dead bird without the appropriate federal permits.

If the falconer allows their license to expire, or is deceased, the mounted raptor must be disposed of as indicated (as well as living birds). To possess mounted raptors outside of having a falconry license requires an individual to obtain the appropriate federal permits.

Establishing a time limit was necessary to provide reasonable compliance with federal law, and 30 days was selected as adequate time to prepare the transfer while allowing the department to ensure compliance. Thirty days is also consistent with other required reporting procedures throughout regulations.

1.8 Existing (i)(1) is being modified as follows: “A [goshawk] captured from the wild or acquired from another licensee or a permitted California wildlife rehabilitator shall be [tagged].” The ISR doesn’t explain why the rehabilitator is being deleted.

~~(i) BANDING AND TAGGING~~ Banding and Tagging.

(1) A goshawk, peregrine, gyrfalcon or Harris’s hawk captured from the wild or acquired from another licensee or a permitted California wildlife rehabilitator shall be banded with a permanent, nonreusable, numbered USFWS leg band if the raptor is not already banded.

This section should never have included “or a permitted California wildlife rehabilitator”. Under current regulation licensed wildlife rehabilitators are not able to permanently transfer a raptor to a falconer. Subsection 679(f)(4), Title 14, CCR state “If any animal cannot be released, it shall be transferred to a zoological garden, museum college, university or other educational/research institution or wildlife exhibitor. If it cannot be released or transferred, it shall be humanely euthanized.”

1.9 Existing (j)(1)(C) is being modified as follows:

“Falconry raptors may be kept outside in the open area at any location when in the presence of a licensed falconer and may be temporarily under watch by a person 12 years or older designated by the licensee.”

There is no explanation for the new text. Also, see clarity issue 2.6 below.

The text is added as a positive response to requests made through the various falconry organizations in order to allow supervision of raptors by non-licensed falconers (e.g. spouse, family member, etc.) while the raptor is outside.

The age was determined by the minimum age, both CFR and 670(e)(A), that an apprentice must attain to be licensed. 50 CFR §21.29 (c) *Practicing falconry* (i) Requirements and possession options for an Apprentice Falconer. (A) You must be at least 12 years of age.

The phrase “a person 12 years or older” would encompass anyone who could be “designated by the licensee”, conforming to the CFR. Licensed falconers raised the issue of who could temporarily watch over (not practice falconry) a raptor. The added language conforms to the provision in CFR that a “family member” could keep watch:

CFR §21.29 (d) *Facilities and care requirements...*(iii) You may keep falconry raptors outside in the open if they are under watch, such as by you or a family member at any location or, for example, by a designated individual in a weathering yard at a falconry meet.

2. Clarity

2.1 From 1.1 above, a plain reading of the final amended text of (a)(2) leads the reader to believe that falconry cannot be practiced in CA without a falconry license and a hunting license. Is this true, or a drafting oversight? The 45-day text required only a valid original falconry license, which makes more sense. A person can practice falconry without also using the raptor to hunt, right?

The intent of the added language was to emphasize the need for valid licenses and permits, pursuant to Section 1054.2, Fish and Game Code. Otherwise, falconers are aware of the differences provided in apprenticeship training and testing before a permit is issued. Some clarity may be gained by reading the definition of falconry as stated in 670(b)(7): "Falconry" means the possession, housing, trapping, transport, and use of raptors for the purpose of hunting or free flight training.

2.2 From 1.3 above, how is the licensee supposed to know which proceedings could disqualify?

As stated in 1.3, previous incidents may have been cause for a violation to the certifications of both federal and state standards required when signing the falconry license.

2.3 From 1.4 above, how is proof of acquisition "maintained?" Does this mean "in possession" or simply available for inspection? Further, how is legal acquisition proved if the falconer caught the bird, rather than having it transferred or otherwise acquired from another person? I.e., how is a legal paper trail created when birds are simply acquired from the wild?

The regulation specifies in 670(f)(1) that all raptor acquisition and disposition information is to be reported to the Department. Formerly falconers were to report to the USFWS by submitting a Federal Form 3-186A for the same purpose. CA is the only state that has received permission from USFWS to allow falconers to only report to the state rather than both the state and feds.

Federal regulations (50 CFR §21.29(b)(2)(ii)) recognizes California's electronic reporting system at <http://www.wildlife.ca.gov/FalconryReporting>. Further, federal regulations, 50 CFR §21.29(e)(6) "Acquisition, transfer, loss, or rebanding of a raptor" subsection (iii) states "You must keep copies of all electronic database submissions documenting take, transfer, loss, rebanding or microchipping of each falconry raptor until 5 years after you have transferred or lost the bird, or it has died."

These reporting documents maintained by falconers would simply need to be made available for inspection.

2.4 Existing (e)(6)(C)2.ii is being modified as follows: “Eagles may only be obtained from captive breeders, imported from another state, or transferred from a rehabilitation facility if the eagle is not releasable a permitted source. What is a “permitted source?”

On 5/5/2016, the USFWS reviewed the Department’s draft regulations. At that time (e)(6)(C)2.ii read, “Eagles may be obtained from captive breeders, or imported from another state.” USFWS commented, “There are no captive breeders at this time as the regulations do not allow captive propagation of eagles.” and changed the regulation text to read, “Eagles may only be obtained from a permitted source.” The language is written to allow for obtaining an eagle from any source that possessed a permit issued consistent with federal law, but as stated by the U.S Fish and Wildlife Service permits are not currently issued to breeders.

2.5 New (e)(7)(C)2. says: “If the applicant or licensee sharing an existing raptor facility with another licensed falconer, and possesses proof of a passed inspection, there is no requirement for an additional inspection.” What kind of proof would satisfy this requirement?

2. If the applicant or licensee is sharing an existing raptor facility with another licensed falconer, and possesses proof of a passed inspection, there is no requirement for an additional inspection.

To practice falconry and obtain birds, every facility must be inspected and pass inspection. The licensed falconer sharing a facility will have had an inspection completed by department Law Enforcement. Department Law Enforcement issues an inspection report on completion of inspection. The new applicant would present this certified inspection form to the Department as proof.

~~670(j)(3)-INSPECTIONS~~ Inspections. Inspections of indoor or outdoor facilities, equipment, and raptors shall be conducted by the department. Inspections are required for a new license applicant, applicants renewing a lapsed license which has been expired more than 5 years, and licensees that move facility housing to a new address, ~~and these persons~~. Applicants and licensees shall initiate the inspection by submitting a complete Raptor Facilities and Falconry Equipment Inspection Report and fees, as specified in Section 703. Equipment and facilities that meet the federal standards shall be certified by the department; using the Raptor Facilities and Falconry Equipment Inspection Report. The department shall not certify equipment and facilities that do not meet the minimum standards and specifications.

2.6 From 1.9 above, what does “temporarily” mean? How long can a non-licensed person keep a falcon outside with no licensee around? Further, what

does “under watch” mean? Is the designated person simply observing a falcon along with a licensed individual, or is that person temporarily able to be solely responsible for the falcon if the licensed person needs to step away for a moment (e.g., to run a quick errand, or even to go in the house briefly)? The ISR says this provision allows “supervision of raptors by non-licensed falconers.” This implies that the licensed falconer is not present, and also begs the question, what is a non-licensed falconer? Does this mean that a person with no falconry experience, or who doesn’t consider himself or herself a “falconer” cannot temporarily watch a raptor pursuant to this section? Are persons younger than 12 years old not allowed to watch or observe falcons outside of their cages under any circumstances whatsoever?

A more regulated form of temporary transfer is provided in Federal regulations – 50 CFR §29.15(d)(6) and (7), and in subsection 670(h), Title 14, CCR. Subsection (j)(1)(C) was amended at the requests of falconers concerned with the word “immediate” presence when a raptor is on a perch in an open weathering area. The circumstances may vary, from being at home while cleaning or modifying a cage to attending a falconry meet. In any case, the licensed falconer must still be on site, but an unlicensed person, age 12 or above, must be watching a falconry bird to ensure the continued protection in a safe environment from predators, changes to the environment, domestic animals.

Since both the licensee and a designated watcher must be in the same location, it would not be possible for the licensee to be absent from the location for any extended period of time, even to run an errand away from the location.