

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format	Comment	Response
Responses to Comments received during the Public Notice period September 9, 2016 – October 22, 2016		
1	<p>Bill Murrin Email dated 10/1/2016</p>	<p>Without referring to the proposed regulatory changes, expresses disagreement with statements of CDFW counsel that he observed on YouTube regarding wildlife officer authority to conduct administrative inspections and argues that falconry is not a highly regulated activity. Asserts that wild raptors become private property once they are captured, and CDFW's focus should be to avoid over-harvest. He acknowledges that falconry is subject to sensible regulation, and offers to send the Commission a copy of his book regarding wildlife law and falconry.</p>
<p>This comment is not directed to any specific proposed regulatory change, but the Commission disagrees with the assertion that the practice of falconry is not a highly regulated activity. "Falconry" is the possession, housing, trapping, transport, and use of raptors for the purpose of hunting or training. (Title 14 section 670(b)(7).) The Migratory Bird Treaty Act, (16 U.S.C. 703-712), prohibits any person from taking, possessing, purchasing, bartering, or selling, among other things, raptors specified in federal regulations, unless the activities are allowed by federal permit or in accordance with federal regulations. Engaging in falconry is prohibited by the federal Migratory Bird Treaty Act and state law without a falconry license. (Fish and Game Code section 395(b) and 50 C.F.R. 21.29(a).) There is no right to practice falconry. Falconry is a recreational opportunity that the Commission has chosen to make available in California by adopting section 670 of Title 14. A state that wishes to allow the practice of falconry must establish regulations that meet or exceed federal standards. State regulations may be more restrictive than the federal standards, but they may not be less restrictive. (50 C.F.R. 21.29(b)(1).) Hunting is a highly regulated activity, and falconry is more regulated than other hunting. In a unanimous California Supreme Court decision, the Court found that "those persons who have voluntarily chosen to engage in the heavily regulated activity of fishing or hunting ... as a consequence have a diminished reasonable expectation of privacy with regard to items directly related to such activity." (<i>People v. Maikhio</i> (2011) 5 Cal.4th 1074, at 1080.)</p>		
2	<p>Mark Perez Email dated 10/3/2016</p>	<p>Opposes searching homes of falconers and believes it is a direct violation of the United States Constitution's Fourth Amendment.</p>
<p>The existing regulation and the proposed amendments do not authorize searches of homes, and they do not violate the Fourth Amendment. This comment fails to distinguish traditional criminal searches from administrative facility inspections consistent with a regulatory scheme. Federal and state falconry regulations require administrative inspections. The courts have consistently supported warrantless inspection authority by CDFW where people choose to engage in heavily regulated activity, the warrantless inspection is necessary to enforce provisions of the regulatory program, and the intrusion is limited to inspection of the regulated activity and not for general crime control. (<i>See, People v. Maikhio, supra, Harbor Hut</i>, 147 Cal. App. 3d 1151, <i>Betchart v. Department of Fish and Game</i> (1984) 158 Cal.App.3d 1104, and <i>People v. Perez</i> (1996) 51 Cal.App.4th 1168.)</p> <p>The existing regulation authorizes unannounced facility inspections and authorizes CDFW to "enter the premises" of any licensed falconer at a reasonable time of day. In the proposed amendments, the Commission has chosen to replace "premises" with "facilities" in order to avoid the perception that this</p>		

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format	Comment	Response
2		<p>regulation authorizes inspection of entire properties. This geographic limitation will focus inspections on caging and facilities where raptors are kept rather than premises, which is consistent with the purpose of these inspections. To accommodate falconer requests, avoid undue stress to captive raptors, and to make the inspection provision more consistent with federal falconry regulations, the Commission has also proposed changes that only allow inspections when the licensed falconer is present. The proposed amendments will also give CDFW inspectors an option that will tend to de-escalate potential conflicts during facility contacts, avoid the potential for nonconsensual or intrusive facility inspections, and provide a remedy in instances where a falconer does not wish to cooperate. Rather than forcing an inspection of an uncooperative falconer's facility, the proposed regulation will allow CDFW to suspend the license until an inspection occurs.</p> <p>Federal falconry regulations adopted by the United States Fish and Wildlife Service (USFWS) provide that falconers must "submit to your State...a signed and dated statement showing that you agree that the falconry facilities and raptors may be inspected without advance notice by State...authorities at any reasonable time of day, but you must be present." (50 C.F.R. 21.29(d)(2)(ii).) The regulations also require states to certify that falconry facilities and equipment meet federal standards. (50 C.F.R. 21.29(d)(1)(ii).) In accordance with these federal requirements, every licensed falconer in California has agreed in writing at the time of application that their facilities are subject to unannounced inspections. This is a condition of engaging in the recreational activity of falconry. There is no right to practice falconry, and falconry regulations do not prohibit or require the keeping of raptors inside of homes. Those falconry licensees who choose to house raptors in their homes do so knowing their cages, perches, and raptor housing are subject to inspection. They have agreed to these inspections in writing when they applied for a falconry license. Whether a person's Fourth Amendment rights have been violated depends upon whether governmental officials violated any legitimate expectation of privacy held by the person. The test for a legitimate expectation of privacy under the Fourth Amendment is (1) whether the individual has shown a subjective expectation of privacy and (2) whether that expectation is one society is prepared to recognize as reasonable. Those who choose to engage in a heavily regulated activity may expect a reduction in their expectation of privacy where the state conducts an inspection driven by regulatory compliance, and not general law enforcement. Inspections of recreational falconry facilities of licensed falconers who have agreed in writing that their facilities are subject to inspection, especially in the context of federal and state regulations providing for inspections, do not violate any expectation of privacy that society is prepared to accept as reasonable.</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format	Comment	Response
<p>3</p> <p>Marilyn Jasper Chair of Public Interest Coalition and Conservation Chair of Sierra Club Placer Group</p> <p>Letter emailed 10/6/2016</p>	<p>A. Falconers have special privileges to use wildlife for hunting purposes. The signed certification on the falconry license acts as an acceptance by the falconer to the laws and regulations governing the sport of falconry. Unannounced visits are an important means for CDFW to determine if there are violations. CDFW law enforcement should not have to make appointments to conduct inspections, nor should falconers have to be present. Opposes the proposed amendment that will require licensees to be present during inspections because it will open the door for noncompliance and avoidance of inspections.</p> <p>B. Falconers should carry or produce any license, permit, stamps permissions or exemptions while practicing falconry to prove they are in compliance.</p> <p>C. Supports the strongest penalties for noncompliance, and wants to ensure clear and enforceable regulations regarding suspensions and revocations. Supports the proposed revisions so long as the language includes immediate revocation authority that is clear and universally enforced.</p>	<p>A. The Commission agrees with this comment except with regard to the presence of the licensee. The Commission has chosen to require the presence of the licensee during facility inspections in the proposed amendment in order to minimize the possibility of causing undue stress to captive raptors, to accommodate falconer requests, and to make the inspection provision more consistent with the federal regulations. However, the Commission agrees that requiring licensee presence could create an opportunity for a falconer to attempt to avoid inspections. That is why the Commission has also proposed the amendments at the end of subdivision (j)(3)(A) authorizing CDFW to deny the issuance of, or immediately suspend, the licenses of licensees who refuse to allow facility inspections as agreed in their application for a falconry permit.</p> <p>B. The Commission agrees with this comment, and notes that the proposed amendments make it unlawful to engage in falconry without having in their immediate possession a valid original falconry license, a valid original hunting license, and any required stamps.</p> <p>C. The Commission shares the commenter’s interest in compliance, clarity, and effective enforcement. The proposed amendments do authorize immediate suspension if a licensed falconer refuses to allow inspections. As amended, the regulation will also authorize CDFW to suspend or revoke a falconry license for failure to comply with laws related to raptors, license fraud, and animal cruelty. However, these suspensions would not be immediate unless the falconer is convicted and the violation pertains to conduct that threatens native wildlife, agricultural interests of this state, the welfare of birds, or public safety, and in cases where the falconer has a history of previous convictions or license suspensions. These limitations on immediate suspension authority are proposed by the Commission in response to concern expressed by the falconry community that their licenses could be suspended for minor or technical violations. The Commission encourages CDFW to notify the Commission of any compliance problems that may require additional changes to the suspension and revocation provision in a future rulemaking.</p>
<p>4</p> <p>Randall Cleveland</p> <p>Email dated 10/6/2016</p>	<p>A. Urges the Commission to keep falconry regulations strict, and do not approve revisions that will result in more lenient regulations. Regulations must be clear, easily enforced, and serve as a deterrent with consequences for noncompliance.</p>	<p>A. The Commission agrees the falconry regulations should be clear and easily enforced, and notes that violations of the regulation are punishable as misdemeanors pursuant to subdivision (a) of Fish and Game Code section 12002. Violations may also lead to license suspension or revocation. To the extent the Commission proposed amendments that could be viewed as more lenient, such as requiring that inspections only take place with the licensee present, the Commission believes the benefits of the proposed change outweighs the potential costs. See Responses 3(A) and 3(C), above, for further discussion of this issue.</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Committer Name, Date, Format	Comment	Response
4	<p>B. Supports unannounced inspections as one of the best ways to ensure compliance, including inspections without the licensee being present. Disagrees that Fourth Amendment rights are being denied. The agreement falconer's sign provides consents to unannounced inspections. To require an appointment to conduct an inspection defeats the purpose of an inspection.</p> <p>C. Disagrees that falconers are responsible for the recovery of the Peregrine Falcon.</p>	<p>B. The Commission agrees with this comment except with regard to the presence of the licensee. See Response 3(A), above, for further discussion of this issue. For further discussion of the Fourth Amendment and facility inspections, see Responses 1 and 2, above.</p> <p>C. Appendix C of the Final Statement of Reasons regarding the practice of falconry, dated April 15, 2013, contains the historic background of falconry and mentions that falconers assisted in conservation efforts through a captive breeding program for the Peregrine Falcon (see page 6 of Appendix C). The Commission recognizes the role that falconry techniques played in the conservation of the Peregrine Falcon in California, though we also recognize that other conservation efforts were also very important, such as the ban on the use of DDT.</p>
5	<p>State Assembly Member Adam Gray</p> <p>Letter dated 10/11/2016</p> <p>Questions the "validity of the proposed inspection language" based upon concerns about its constitutionality, compliance with the APA, and failure to meet the inspection warrant requirements of "(Title 13 Inspection Warrants [1833.50-1822.60])." The member urges the Commission "to strike the proposed regulations regarding inspections of licensed falconers without warrant and due process of law."</p>	<p>Although the Commission believes Assemblymember Gray's concerns regarding falconry inspections are unfounded (see Responses 1 and 2, above), the Commission proposed additional changes to subdivision (j)(3)(A) and amended the ISOR for this proposal on November 9, 2016. The Commission has chosen to require the presence of the licensee during facility inspections in the proposed amendment in order to minimize the possibility of causing undue stress to captive raptors, to accommodate falconer requests, and to make the inspection provision more consistent with the federal regulations. But, since requiring licensee presence could create an opportunity for a falconer to attempt to avoid inspections, the Commission has also proposed the amendments at the end of subdivision (j)(3)(A) authorizing CDFW to deny the issuance of, or immediately suspend, the licenses of licensees who refuse to allow facility inspections as agreed in their application for a falconry permit. This change will also give CDFW inspectors an option that will tend to de-escalate potential conflicts during facility contacts and avoid the potential for nonconsensual or intrusive facility inspections. The Commission disagrees with Assemblymember Gray's suggestion that the Commission has somehow not complied with the APA or that inspection warrants are somehow relevant to the proposed regulatory change. While provisions of the California Code of Civil Procedure (sections 1822.50 – 1822.60) authorize courts to issue inspection warrants for inspections "required or authorized by state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, or zoning," these provisions are not applicable to falconry inspections.</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format	Comment	Response
<p>6 Fred Seaman</p> <p>Eight emails, with attachments, all dated 10/17/2016</p>	<p>A. 1st Email: Claims he was "was "raided" under guise of an "inspection." Attaches October 11, 2016 letter from Assemblymember Adam Gray and report from attorney Peter Stavrianoudakis. Assemblymember Gray's letter questions the "validity of the proposed inspection language" based upon concerns about its constitutionality, compliance with the APA, and failure to meet the inspection warrant requirements of "(Title 13 Inspection Warrants [1833.50-1822.60])." The Assemblymember urges the Commission "to strike the proposed regulations regarding inspections of licensed falconers without,warrant and due process of law." The report from Mr. Stavrianoudakis describes a conference call he attended with Department staff to discuss the proposed falconry regulations.</p> <p>B. 2nd Email: Rather than commenting on the proposed regulatory action, this message provides background information regarding the takeover of Mr. Seaman's corporation, which Mr. Seaman asserts led to CDFW law enforcement inspections and resulting litigation. Includes attachment titled, "Statement of Facts on phone call from Warden Chance re Fred Seaman".</p> <p>C. 3rd Email: Information on events that led to CDFW law enforcement making appointment for inspection.</p> <p>D. 4th Email: Information regarding the events planned for the day of the inspection.</p> <p>E. 5th Email: Information on events of the day before the scheduled inspection – during the unannounced inspection. Includes attachment titled, "Statement of James C. Buttery re Telephone Conference of September 27, 2016, 2016 Confidential Attorney Client Privileged".</p> <p>F. 6th Email: Further information on events of the day of the inspection. Includes attachment titled,</p>	<p>A. Government Code section 11346.9, subdivision (a)(3), requires the Commission to provide a "summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change." However, "[t]his requirement applies only to objections or recommendations specifically directed at the agency's proposed action." The Commission's proposed action is the amendment of section 670. Comments not specifically directed at the Commission's amendment of section 670 do not require a Commission response. This email message, and several additional messages from this commenter, relates to an ongoing investigation conducted by CDFW, which the Commission cannot comment on, and it is not directed at the Commission's amendment of section 670. The attached report from Mr. Stavrianoudakis relates to a meeting he attended with Department staff where they discussed falconry regulations, but it too is not directed to the Commission's proposed action. See Response 5, above, regarding Assemblymember Gray's comment letter.</p> <p>B. Both the email from Mr. Seaman and the attachment relate to an ongoing investigation conducted by CDFW, which the Commission cannot comment on, and it is not directed at the Commission's proposed amendment of section 670.</p> <p>C. This message relates to an ongoing investigation conducted by CDFW, which the Commission cannot comment on, and it is not directed at the Commission's proposed amendment of section 670.</p> <p>D. See Response 6(C), above.</p> <p>E. See Response 6(B), above.</p> <p>F. See Response 6(B), above.</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Committer Name, Date, Format	Comment	Response
6	<p>“Elizabeth A. Culley’s Summary of Events at September 27, 2016 Site Inspection by the Department of Fish and Wildlife”.</p> <p>G. 7th Email: Further information on events of the day of the inspection. Includes attachment titled, “Time line”.</p> <p>H. 8th Email: Further information on events and time line. Includes attachment titled, “Seaman interview re search inspection”.</p>	<p>G. See Response 6(B), above.</p> <p>H. See Response 6(B), above.</p>
7	<p>Troy Morris Email dated 10/19/2016</p> <p>In response to a statement made by Commissioner Williams during a public meeting about <i>People v. Maikho</i>, the commenter asks the Commission to note the circumstances of the case as documented in an attached Western Outdoor News article titled, “Perspective: Game Wardens and Probable Cause – the complete story.”</p>	<p>The Commission is very familiar with the circumstances involved in the warrantless detention and search that was upheld in the <i>Maikho</i> decision, which is discussed in Responses 1 and 2, above.</p>
<p>Summary and Response to Oral Comments and letters received at the October 20 Discussion hearing.</p>		
8	<p>Troy Morris Oral comment on 10/20/2016</p> <p>Meeting with CDFW Director and FGC staff was fruitless because no one has yet provided a citation of law that allows for unannounced inspections. Requests that this citation be given.</p>	<p>The last page of the FSOR includes a list of the authorities for this regulation. See also Response 15, below.</p>
9	<p>Eric Oriyoshi Oral comment on 10/20/2016</p> <p>A. Warrantless searches by law enforcement violate the Fourth Amendment. These are not just administrative inspections, they are searches. Cites Title 13 California Code of Civil Procedure.</p> <p>B. There is no case law that supports warrantless searches by CDFW law enforcement. Cites decision in <i>Betchart v. Department of Fish and Game</i>.</p> <p>C. Falconry does not meet definition of a highly regulated activity.</p> <p>D. Housing raptors inside is common.</p>	<p>A. See Response 1 and 2, above.</p> <p>B. See Responses 1 and 2, above. The <i>Betchart</i> court upheld CDFW’s authority to reasonably enter and patrol private open land without warrants where game is present and hunting occurs. (<i>Betchart v. Department of Fish and Game</i> (1984), <i>supra</i>.)</p> <p>C. See Response 1, above.</p> <p>D. The Commission has not recommended any restrictions on the location of falconry facilities. Falconers have the option of housing raptors inside or outside, consistent with the regulation.</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format		Comment	Response
10	Bill Gaines Oral comment on 10/20/2016	The California Hawking Club (CHC) has worked with CDFW and Commission staff on regulations extensively over the years and supports the amendments regarding inspections and documentation. CHC thanks staff for working to revise language and narrow down the issues to be dealt with in the future, including take of Northern Goshawk from the Tahoe Basin, and the lottery system for Prairie Falcons.	CDFW and the Commission appreciate the thanks given and look forward to resolving further issues in the future. The Commission appreciates this support of the proposed amendments.
Responses to Comments from Emails and Letters received during the 15 day notice period October 21, 2016, through December 8, 2016.			
11	Fred Seaman Email dated 11/12/2016	<p>A. Asserts that he was “abused” and given misinformation by CDFW’s Law Enforcement Division regarding the inspection of his facility. Asserts CDFW’s License and Revenue Branch did not order inspection of his facility, and attaches letter from Chief Bess to Mr. Karl Kerster in apparent effort to support this assertion.</p> <p>B. Objects to the proposed amendments at the end of subdivision (j)(3)(A) authorizing CDFW to deny the issuance of, or immediately suspend, the license of licensees who refuse to allow facility inspections as agreed in their application for a falconry permit, and asks why “it is so important to make a provision for something that has never happened.”</p> <p>C. Regarding unannounced inspections, asserts “the entire clause as well as the action taken against me” violates Fish and Game Code section 857, and includes excerpts of a prior version of this statute, which was amended in 2016.</p>	<p>A. See Response 6(C), above.</p> <p>B. The Commission has chosen to require the presence of the licensee during facility inspections in the proposed amendment in order to minimize the possibility of causing undue stress to captive raptors, to accommodate falconer requests, and to make the inspection provision more consistent with the federal regulations. However, the Commission is concerned that requiring licensee presence could create the opportunity for falconers to attempt to avoid inspections. That is why the Commission has also proposed the amendments at the end of subdivision (j)(3)(A) authorizing CDFW to deny the issuance of, or immediately suspend, the license of licensees who refuse to allow facility inspections as agreed in their application for a falconry permit.</p> <p>C. The Commission disagrees with the assertion that the inspection provision of section 670 conflicts with Fish and Game Code section 857. Subdivision (a) of section 857 does not apply to CDFW wildlife officers. That subdivision provides that “the status of a person as an employee, agent, or licensee of the department does not confer upon that person a special right or privilege to knowingly enter private land without the consent of the owner, a search warrant, or an inspection warrant.” However, subdivision (c) provides, “Subdivision (a) does not apply to a sworn peace officer authorized pursuant to subdivision (e) of Section 830.2 of the Penal Code.... Subdivision (a) shall not be construed to define or alter any authority conferred on those peace officers by any other law or court decision.” Falconry inspections are conducted by CDFW wildlife officers. CDFW wildlife officers are sworn peace officers authorized pursuant to subdivision (e) of section</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format		Comment	Response
11			830.2 of the Penal Code. In addition, falconry licensees agree in writing to facility inspections at the time they apply for a license. The Commission cannot comment on the applicability of Fish and Game Code section 857 to the CDFW “action taken against” the commenter, and this portion of the comment is not directed at the Commission’s proposed amendment of section 670.
12	Chi Ma Email dated 11/13/2016	Opposes the proposed inspection language, and believes the regulation is in conflict with the U.S. Constitution, California's Constitution, and section 52.1 of the Civil Code. (Includes excerpts or copies of Amendment IV of the United States Constitution, Section 13 of the California Constitution, Title 18, U.S.C., Section 242 - Deprivation of Rights Under Color of Law, and Civil Code Section 52.1.)	The Commission disagrees with this comment for the reasons set forth in Response 2, above.
13	Fred Seaman Two duplicate emails dated 11/15/2016	Opposes the proposed inspection language, and believes the regulation is in conflict with the U.S. Constitution and the California Constitution. Also asserts that implementation of the regulation by CDFW will violate Title 18, U.S.C., Section 242 - Deprivation of Rights Under Color of Law, and Civil Code Section 52.1. (Includes excerpts or copies of Amendment IV of the United States Constitution, Section 13 of the California Constitution, Title 18, U.S.C., Section 242 - Deprivation of Rights Under Color of Law, and Civil Code Section 52.1.)	The Commission disagrees with this comment for the reasons set forth in Response 2, above.
14	Doug Alton Email dated 11/15/2016	Opposes the proposed inspection language. Suggests adding the words “with a warrant” to bring the regulations into compliance with “state and federal laws, codes and requirements under legislated laws, court decisions, and the US and State Constitutions.”	See Responses 1 and 2, above.
15	Lance Leong Email dated 11/16/2016	Opposes the proposed language regarding administrative inspections, and believes 670(j)(3)(A) should be removed in its entirety. Reasons include, (1) violation of U.S. and CA constitutions, (2) no authority is granted in law, (3) case law does not support these types of searches, and (4) proposed wording regarding notification to falconers and that falconers must be present eliminates the primary concern of CDFW law enforcement officers.	See Responses 1 and 2, above. The Commission disagrees with the assertion that the Commission is without authority to make the proposed regulatory changes, and encourages the commenter to review the statutes cited as authority in the note following the proposed regulatory text (Fish and Game Code sections 200, 202, 203, 355, 356, 395, 396, 398, 710.5, 710.7, 713, 1050, 1054, 1530, 1583, 1802, 3007, 3031, 3039, 3503, 3503.5, 3511, 3513, 3800, 3801.6, 3950, 4150, and 10500). These authorities provide the Commission ample authority to adopt a comprehensive regulatory scheme addressing the possession of raptors and the practice of falconry, and they have been posted since this proposed regulatory action was publicly noticed on August 30, 2016.

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format	Comment	Response
<p>16 Marilyn Jasper Chair of Public Interest Coalition and Conservation Chair of Sierra Club Placer Group Letter emailed 11/21/2016</p>	<p>A. Opposes using “current practice” of falconers as the apparent rationale for proposing some of the regulatory changes. The Commission should focus on the regulation’s wildlife impacts and benefits.</p> <p>B. Objects to the proposed amendment to subsection 670(j) regarding unannounced inspections. Allowing the privilege of capturing and privately confining wildlife, which would normally be protected and held in trust for all, and then to use that state wildlife resource to hunt game and non-game, requires effective enforcement, and the activity must be heavily regulated. Not allowing CDFW officers the option for unannounced visits would compromise the ability to enforce and oversee falconry activities, and compromise the health and safety of the raptors in possession. The changes will invite abuse and noncompliance, and will put wildlife at risk.</p> <p>C. Believes that falconer’s claims that constitutional rights are being violated are erroneous and lack merit. Notes that falconers give written consent to allow unannounced inspections in the licensing process and cases have upheld wildlife officer authority to conduct inspections for the purpose of regulating state-owned wildlife resources. Cites <i>Bechart v. Department of Fish and Game</i> and <i>Maikhio</i> decisions.</p> <p>D. Expresses strong opposition to the requirement of the licensee to be present at the time of inspection. Unannounced inspections are a most efficient method of ensuring the health of captive wildlife held in the public trust, to evaluate the competence and capacity of licensees to care for raptors, and to determine compliance. Having to announce, make appointments, or schedule inspections will result in temporary clean ups and concealment of noncompliant conditions.</p> <p>E. Notes that some commenters objecting to unannounced inspections appear to be focused on</p>	<p>A. The Commission agrees that impacts to wildlife populations and the welfare of captive raptors are important factors that should guide our decisions, but other factors such as enforceability, consistency with federal and state laws, and current practices of falconers also play a role in our decision-making process.</p> <p>B. The Commission agrees that continuing to allow unannounced inspections is important in ensuring compliance, but believes the commenter may have misread the proposed regulation. Although the proposed amendments require the licensee to be present during facility inspections, the regulations will still allow CDFW to “conduct unannounced visits to inspect facilities, equipment, or raptors possessed by the licensee.” The Commission expects unannounced inspections to continue, but with licensees present.</p> <p>C. The Commission agrees, as explained in Responses 1 and 2, above.</p> <p>D. The Commission agrees that continuing to allow unannounced inspections is important in ensuring compliance and trusts CDFW to conduct inspections in ways that do not allow noncompliance to be covered up or concealed. The Commission has chosen to require the presence of the licensee during facility inspections in the proposed amendment in order to minimize the possibility of causing undue stress to captive raptors, to accommodate falconer requests, and to make the inspection provision more consistent with the federal regulations. Although the Commission believes the majority of licensees are in compliance with state and federal law, the Commission agrees that requiring licensee presence could create an opportunity for temporary clean ups or concealment of noncompliance in cases where licensees have advance notice of facility inspections. But, these are challenges that wildlife officers encounter every day, and the Commission is confident that CDFW will still conduct unannounced facility inspections and take appropriate action to minimize opportunities to conceal noncompliance.</p> <p>E. The Commission agrees with this comment and notes that if residential facility inspections become too problematic for CDFW or the falconry community, the Commission could amend the regulation to prohibit the housing of raptors within the home.</p> <p>F. It is not necessary for this regulation to specify every document that could be required in all possible scenarios involving falconry. “Falconry” is the possession, housing, trapping, transport, and use of raptors for the purpose of hunting or training. (Title 14 section 670(b)(7).) The proposed amendments will prohibit the</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format	Comment	Response
	<p>raptor confinement facilities that are inside residential structures, and argues that location of facilities to be inspected are at the sole choice of the licensee who has full knowledge that unannounced inspections will be conducted. Licensees should put their raptors in separate structures if they do not welcome facility inspections in their homes. Protection of raptors and compliance with regulations should be the primary goal, and not licensee convenience or angst.</p> <p>F. Opposes the amendment to Subsection 670(a) to reduce the number of documents required to be carried by falconers when hunting, and notes that written permission to hunt on private property is required when hunting.</p> <p>G. While acknowledging the reasonableness of meeting with falconers or other consumptive groups regulated by wildlife laws, asserts that equal time should be spent meeting with non-consumptive groups in order to hear all sides. This would avoid the perception that the Commission and CDFW are listening only to those with “self-serving recreational or take interests”.</p> <p>H. Requests that language be added to “strengthen the likelihood of convictions for falconry regulation noncompliance and to impose stronger penalties, immediate license revocation(s), and universal enforcement (as opposed to “selective enforcement”) upon conviction.”</p>	<p>practice of falconry without having in immediate possession an original falconry license, hunting license, and any required stamps. But, when hunting, falconers must comply with all other laws that regulate hunters. So, for example, even though this regulation will not require falconers to obtain written permission of the private property owner before entering the property to hunt as required by Fish and Game Code section 2016, falconers must still comply with this law just like any other hunter.</p> <p>G. Although this comment is not directed at the proposed action, the Commission appreciates this concern and strives to be equally available to both consumptive and non-consumptive users of wildlife resources.</p> <p>H. The Commission shares the commenter’s interest in ensuring compliance through effective enforcement, but has chosen not to propose additional changes to the regulation at this time. However, it is unclear what language would increase the likelihood of convictions for noncompliance or provide for universal enforcement. The Commission is not aware of any problems with the existing language, but encourages the public and CDFW to bring any enforcement problems that arise in the future to the Commission’s attention.</p>
17	<p>Randall Cleveland and Protecting Earth & Animals with Compassion & Education</p> <p>Letter emailed 11/22/2016</p> <p>A. Requests Commission keep falconry regulations a strict as possible. Refers to “October letter” points being still valid, especially in regards to unannounced inspections.</p> <p>B. Allowing falconers to possess un-banded raptors is “an invitation to abusive noncompliance.” Having banded raptors is part of the inspection process and should not be considered outside the scope of this regulatory rulemaking.</p>	<p>A. See Responses 4(A) and 4(B), above.</p> <p>B. Whether regulations should require all raptors to be banded or not is beyond the scope of this rulemaking. The primary purpose of this rulemaking is to update the regulation to bring it more in line with the current practice of falconry in California and make minor edits and clarifying changes that do not require a re-analysis of impacts within an Environmental Document. More substantive changes such as this can be discussed in future Wildlife Resource Committee</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format	Comment	Response
17	<p>C. The suggestion in the ISOR that the limited number of falconers in the state has no negative impacts and requires no mitigation measures is erroneous.</p> <p>D. The statement in the ISOR that there will be no cumulative effects of the changes statewide with regard to the health and welfare of California residents is erroneous. Making regulations less stringent impacts the health and welfare of Californians who enjoy the outdoors and wildlife.</p> <p>E. Delete the word “may” and insert the word “shall.”</p> <p>F. Do not amend Subsection 670(j)(3)(A). The insertion of the word “reasonable” in this subsection allows inspections to be avoided without consequences. Argues for imposition of increased fines to cover all the enforcement costs of CDFW.</p> <p>G. Do not allow for the possession of owls for falconry. Owls hunt at night and should not be used.</p> <p>H. The use of prey-bait traps to capture raptors is cruel and should not be used.</p>	<p>meetings where falconry is on the agenda. In the future, we will be assessing marking devices to meet CDFW needs and the needs of the falconers.</p> <p>C. The number of falconers is noted in the ISOR section VII (Economic Impacts). The number of falconers in the state does actually have bearing on the potential economic impacts of the regulatory package. Regardless though, this rulemaking is primarily cleaning up the current regulatory language and correcting errors. It does not make substantive changes that are likely to produce economic impacts. For these reasons, negative economic impacts are not anticipated.</p> <p>D. It is unclear which proposed change this comment applies to, and the Commission disagrees that the proposed changes will result in cumulative effects on the health and welfare of Californians. See also Response 17(C), above.</p> <p>E. It is unclear if this comment relates to the regulatory text or to the ISOR and what this suggested change is referring to.</p> <p>F. The proposed regulatory change will allow CDFW to deny issuance of, or immediately suspend, the license of a licensee who refuses to allow inspections, and provides that a refusal to allow inspection may be inferred, if after “reasonable attempts by the department, the licensee is unavailable for inspection.” The Commission acknowledges that this may require CDFW staff to document more than one attempt to conduct an inspection before exercising its authority to deny or suspend a license, but disagrees that the word “reasonable” is so ambiguous that inspections will be avoided without consequence. The suggestion that fine amounts be increased is beyond the scope of this rulemaking and may require statutory changes. See Fish and Game Code sections 12000 and 12002 regarding fines and penalties for violations.</p> <p>G. The owl species allowed for use in falconry include the Great Horned Owl (<i>Bubo virginianus</i>) and the Barred Owl (<i>Strix varia</i>). Great Horned Owls have always been used in the practice of falconry in the United States. Though Barred Owls are new to falconry, they possess many of the same characteristics of the Great Horned Owl. Both species are nocturnal and crepuscular.</p> <p>H. Trapping techniques for raptors have a long history. Most raptor trap types include the use of live prey to lure the raptors to the trap. Over the years many books, reports and publications have been written to address appropriate trapping techniques and ethics, including the use of live lures. For instance, the Raptor</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format	Comment	Response
17	<p>I. Requests the practice of falconry be abolished, with the following possible exceptions: (1) to assist in rehabilitation of birds of prey, or (2) permitted depredation.</p>	<p>Research Foundation published a well-regarded book titled, "Raptor Research and Management Techniques" written by various experts in this field of study. In chapter 12 of this book it says, "Raptor researchers should ensure that the use of live lures is legal in the country they are trapping and should treat lures humanely and not subject them to undue harm and stress." Trapping techniques used by falconers should be consistent with accepted practices, such as presented in this book.</p> <p>I. Whether to abolish falconry in California is beyond the scope of this rulemaking. However, as stated in the Final Environmental Document for Section 670 and Section 703, Title 14, dated February 22, 2013, CDFW and the Commission recommends continuing the practice of falconry. To abolish falconry in the state is contrary to this recommendation and imposing this type of restriction would obstruct the traditional practice of falconry.</p>
18	<p>Troy Morris American Falconry Conservancy</p> <p>Letter emailed 11/29/2016</p> <p>A. Regulatory authority is an absolute requirement of the APA, and the American Falconry Conservancy has been asking for authority for warrantless searches. Asserts that California Civil Code section 656 and Fish and Game Code sections 857(a) and 858(a) are pertinent to this issue.</p> <p>B. Disagrees that falconry is a privilege and asserts, "Falconry is a right, first and foremost, with the only legal justification for oversight applying to monitoring harvest of wild raptors to ensure the preservation of healthy raptor populations."</p> <p>C. Asserts that in Fourth Amendment criminal cases, the government has the burden of establishing consent was given free of coercion. Includes excerpts from criminal court decisions in support of this assertion while acknowledging that there are valid statutes providing for warrantless inspections. Asserts the proposed regulation will coerce consent, making all subsequent falconry inspections unconstitutional.</p> <p>D. Argues that changing "premises" to "facilities" is an attempt to make an end run around the Fourth Amendment, and notes that Fourth Amendment protections apply to both dwellings and their</p>	<p>A. See Response 15, above, for the regulatory authority for the proposed action. The proposed regulation is not inconsistent with the statutes cited by the commenter, and the Commission is not relying on those statutes as authority for the proposed regulatory changes. See also Response 11(C), above, regarding Fish and Game Code section 857.</p> <p>B. For the reasons explained in Response 1, above, the Commission disagrees with this comment.</p> <p>C. See Responses 1 and 2, above. This comment fails to acknowledge that falconers agree to facility inspections as a condition of obtaining a licensee. It also fails to distinguish between traditional criminal searches and administrative facility inspections consistent with a regulatory scheme.</p> <p>D. See Responses 1 and 2, above. All falconers agree in writing at the time of application that their facilities are subject to inspection. The proposed regulation does not violate state or federal law. The Commission agrees that Fourth Amendment protections extend beyond dwellings to include their curtilage. While</p>

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Commenter Name, Date, Format		Comment	Response
18		curtilage. Asserts that sport falconry, hunting, and fishing are not highly regulated, and the proposed regulation violates state and federal law.	the Commission could avoid all confusion regarding administrative inspections and the Fourth Amendment by prohibiting the keeping or possession of raptors within a dwelling or its curtilage, the Commission has chosen to continue to allow falconers to determine the location of their facilities with the understanding that the facilities are subject to inspection.
19	Peter Stavrianou-dakis Email 12/5/2016	Transmittal email with attached legal opinion and request for notice from the Sheriff/Coroner of Merced County. A. Concludes the existing regulation is “essentially a search without a warrant in violation of the 4 th Amendment” and that the proposed regulation would also violate the Constitution. B. “As the duly elected constitutional Law Enforcement head in the County of Merced,” asks CDFW to give prior notice to the sheriff before conducting any falconry inspections in Merced County.	A. See Responses 1 and 2, above. B. This request is not directed at the Commission’s proposed amendment of section 670.
Responses to Oral Comments received at the December 8 Adoption hearing.			
19	Glenn Stewart President of the California Hawking Club	The Club Board voted to support the adoption of the amendments and appreciates the change to now require the presence of the falconer during inspections. This is good for the falconer and for the birds.	The Commission appreciates this support of the proposed amendments.
20	Troy Morris President American Falconry Conservancy	A. Does not support the amendments with the proposed requirement for inspections, and believes the inspection requirement is a violation of the Fourth Amendment. B. Cited FGC §857: “(a) Notwithstanding any other provision of law, the status of a person as an employee, agent, or licensee of the department does not confer upon that person a special right or privilege to knowingly enter private land without the consent of the owner, a search warrant, or an inspection warrant.”	A. See Responses 1 and 2, above. B. See Response 11(C), above.

Appendix A. Summary of Primary Considerations Raised in Support of or Opposition to the Amendments to Section 670, T14, CCR.

Committer Name, Date, Format		Comment	Response
21	Steve Sanders Licensed California Falconer	Supports adoption of the amendments, which are necessary to continue falconry in California. Inspections are integral to the sport of falconry, and believe the regulation will improve the welfare of the birds.	The Commission appreciates this support of the proposed amendments.
22	Wayne Upton Master Falconer	Supports adoption of the proposed amendments.	The Commission appreciates this support of the proposed amendments.
23	Mark Hannelley California Waterfowl Association	Supports adoption of the proposed amendments.	The Commission appreciates this support of the proposed amendments.
24	Frank Coffman Treasurer of California Hawking Club	Supports adoption of the proposed amendments.	The Commission appreciates this support of the proposed amendments.
25	Peter Stavrianoudakis	Does not support the amendments with the continued requirement for inspections. The inspection provision violates the Fourth Amendment.	See Responses 1 and 2, above.
26	Bill Gaines CA Hawking Club	Supports adoption of the proposed amendments. Acknowledged the support and cooperation of CDFW in meeting the needs of the falconry community.	The Commission appreciates this support of the proposed amendments.