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STATE OF CALIFORNIA
Fish and Game Commission

December 14, 2012

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This is to provide you with a copy of the notice of proposed regulatory action relative to Amending Section 670; and Repealing Section 678, Title 14, California Code of Regulations, relating to the Practice of Falconry, which are published in the California Regulatory Notice Register on December 14, 2012.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Additional information and all associated documents may be found on the Fish and Game Commission website at www.fgc.ca.gov.

Ms. Nicole Carion, Department of Fish and Game, phone (916) 445-0826, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Jon D. Snellstrom
Associate Governmental Program Analyst

Attachment

TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by 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 and reference 395, 396, 713, 1050, 3007, 3031, 3503, 3503.5, 3511, 3513, 3801.6. Fish and Game Code; as well as Parts 21.29 and 21.30 of Title 50, Code of Federal Regulations (CFR); proposes to Amend Section 670 and Repeal Section 678, Title 14, California Code of Regulations (CCR), relating to Practice of Falconry Regulations.

INFORMATIVE DIGEST

Regulations for the practice of falconry are contained in Section 670, Title 14, CCR (14 CCR 670) along with federal regulations in Section 21, Title 50, CFR (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 50 CFR 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 (14 CCR 670), 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 UTMs 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 under a separate Department of Fish and Game rulemaking and setting of fees will require revision of Title 14, Section 703 under Department authority found in Section 2150.2, Fish and Game Code.

The benefits of the proposed regulations are concurrence with Federal law, and sustainable management of the raptor and upland game resources to protect raptor populations while continuing to provide recreational opportunities.

The proposed regulations are neither inconsistent nor incompatible with existing Federal and State regulations. No other State agency has the authority to promulgate falconry regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held in the State of California Resources Building, First Floor Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, February 6, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held in the Mt. Shasta Hatchery Museum, #3 North Old Stage Road, Mt. Shasta, California, on Wednesday, March 6, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before February 20, 2013 to be included in the Commissioners' briefing materials, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 12:00 noon on March 4, 2013 to be delivered by staff to the meeting; or be presented to Commission staff at the meeting no later than the agenda item is heard on March 6, 2013, in Mt. Shasta, CA.** If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Ms. Carie Battistone, Staff Environmental Scientist, Wildlife Branch, Department of Fish and Game, telephone (916) 445-3615, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.fgc.ca.gov.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

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.

Effect on Small Business

It has been determined that the adoption of these regulations will not have impact to small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: November 27, 2012