

U.S. Fish & Wildlife Service: Proposed educational use permit regulations

The U.S. Fish and Wildlife Service is proposing educational use permit regulations to hold live non-releasable or captive-bred migratory birds and nonliving migratory bird specimens for use in teaching people about migratory bird conservation and ecology.

The regulations also propose remove the permit exemption for some public institutions for possession of live migratory birds and migratory bird specimens, and clarify that birds held under the exemption must be used for conservation education. For specimens such as feathers, parts, carcasses, nonviable eggs, and nests, the regulations would be updated and clarified to more accurately reflect the types of institutions that may hold specimens for public educational purposes.

The Service currently authorizes educational activities that involve migratory birds using Special Purpose permits issued under 50 CFR 21.27, which provides for permits for activities not specifically authorized by an existing permit category. The proposed regulations, once finalized, would replace the use of the Special Purpose permits for possession and educational use of migratory birds. The regulations are intended to provide consistency and clarity in the administration of permits for migratory bird educational activities nationwide, and ensure that migratory birds are used humanely and in a manner consistent with the protections afforded by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.).

The proposed rule was crafted with the benefit of public comment received in response to an advance notice of proposed rulemaking the Service published in the Federal Register on October 13, 2005 (70 FR 59710). That notice solicited public input on facilities standards, experience criteria, and commercialization, among other issues associated with use of migratory birds for educational purposes.

The primary purpose of the proposed permit would be to authorize conservation education programs. Each program would have to provide a message about migratory bird conservation, natural history, biology, or ecology. The regulation contains husbandry standards, including sizes of enclosures, perch requirements, and diet. The proposal also includes guidelines for the Service to use in evaluating applicants' experience to determine what species they are qualified to hold.

The rulemaking addresses possession of bald eagles and golden eagles for educational purposes. Current regulations governing the educational use of eagles are at 50 CFR part 22 (Eagle Exhibition). Most of the same provisions for use of other MBTA-protected birds for educational purposes would apply to eagles. However, the proposal contains some differences, based on the additional statutory requirements of the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668 et seq.), which applies to bald eagles and golden eagles in addition to the MBTA. The primary distinction is that only public museums, public scientific societies, and public zoological parks are allowed under the Eagle Act to obtain permits to exhibit eagles. The rule proposes regulatory definitions for "public museum," "public scientific society," and "public zoological park" to

remove ambiguity about who may qualify to receive eagle educational use permits. The new definitions are intended to be as broad as possible within the intent of the Eagle Act so as not to unnecessarily restrict placement of eagles for educational use with otherwise qualified individuals and organizations.

The proposed rule would revise current permit exceptions set forth under 50 CFR 21.12. The rule would limit the permit exception for possession of live birds to institutions accredited by the Association of Zoos and Aquariums (AZA). All other individuals and entities that keep live birds for education purposes would be required to obtain an educational use permit. The permit-exempt AZA institutions would be required to comply with the husbandry standards and several other conditions that apply to permittees. These revisions would ensure that all entities that hold live birds for educational use are held to the same standards. Sale and purchase between exempt institutions and permittees and among exempt institutions would be restricted to captive-bred migratory birds. For specimens such as feathers, parts, carcasses, nonviable eggs, and nests, the regulations would be updated to more accurately reflect the types of institutions that may hold specimens for public educational purposes.

We also wish to notify you that we have recently begun coordinating with the USDA's Animal and Plant Health Inspection Service (APHIS) Animal Care program regarding regulations that agency is developing that are required by 2002 amendments to the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*). One new provision in the law changes the definition of "animal" to include, among other species, all birds except those bred for use in research. As a result, APHIS is mandated to create standards for the handling, care, treatment, and transportation of all birds (except birds that are bred for use in research) that are used, or intended for use for research, teaching, testing, experimentation, or *exhibition purposes*, or intended for use as a pet. Consequently, the regulations APHIS is developing cannot exclude MBTA-protected birds and eagles that are held under the educational use permits required by the MBTA and which are the subject of the regulations we are proposing. The APHIS regulations will also apply to AZA-accredited facilities that hold live birds and are exempt from the MBTA permit requirement. We intend to work closely with APHIS to ensure that each of our agency's regulations are not redundant or in conflict with one another, or overly-burdensome to the entities regulated by both agencies.

We encourage you to notify your membership of these proposed regulations so that they may review and comment on them. You can access the proposed regulations at <http://www.fws.gov/migratorybirds>. Instructions for submitting comments are contained in the rule. We will carefully consider all substantive comments we receive. The information and views of your members will be of particular value in terms of crafting a final regulation. If you have any questions, please contact Eliza Savage at (703) 358-2329 or eliza_savage@fws.gov.

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