

Protection Systems, as incorporated by reference. The Director of the Office of the Federal Register has approved the NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*, 1998 edition, issued January 16, 1998 for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269.

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(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 6, 2008.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: May 6, 2008.

**Michael O. Leavitt,**

*Secretary.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 21**

[FWS-R9-MB-2007-0012; 91200-1231-9BPP]

RIN 1018-AV35

**Migratory Bird Permits; Revisions to Migratory Bird Import and Export Regulations**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, change the regulations governing migratory bird permitting. We amend 50 CFR part 21 to allow the export of lawfully-acquired, captive-bred raptors without obtaining a migratory bird export permit; to resolve problems related to export of species

covered by Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permits or certificates; to allow the importation and possession without an import permit of legally-acquired migratory game birds in the families Anatidae, Columbidae, Gruidae, Rallidae, or Scolopacidae that were lawfully hunted in a foreign country; to extend the maximum time for which an import and export permit is valid from 3 to 5 years; and to reorganize and reword the regulations to make them easier to understand.

**DATES:** This rule is effective on September 12, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703-358-1825.

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Fish and Wildlife Service is the Federal agency that has been delegated the responsibility to carry out the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States-Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976.

Among other things, we manage the import and export of migratory birds and their parts, eggs, and nests. The regulations at 50 CFR 21.21 set forth the requirements for import and export permits for migratory birds and their parts, eggs, and nests, including requirements for import and export permits, application procedures for these permits, additional permit conditions, and the term for which a permit is valid. These regulations are 18 years old and are, in part, outdated. In particular, these regulations do not mention the requirements associated with CITES, addressed in part 23 of our regulations. In addition, many of the requirements currently set forth at § 21.21 simply reference another part or section of our regulations. They are

therefore difficult to read and understand.

We proposed revisions to the regulations governing import and export of migratory birds on November 19, 2007 (72 FR 64981). Among other things, we wanted to: Address the export of species covered by CITES; allow the export of lawfully-acquired, captive-bred raptors without an export permit; allow the importation and possession without a migratory bird import permit of legally-acquired migratory game birds in the families Anatidae, Columbidae, Gruidae, Rallidae, and Scolopacidae that were lawfully hunted in a foreign country; extend the maximum time for which a migratory bird import and export permit is valid from 3 to 5 years; and reorganize and reword the regulations to make them easier to understand. We revised the proposed regulations to address comments we received, but we made no major changes to the proposed rule.

**Changes in the Migratory Bird Import and Export Regulations**

General requirements (§ 21.21(a)): Current § 21.21(a) provides the general requirements for import and export permits, as well as the exceptions to these requirements. We reorganize current § 21.21 to separate the general requirements (§ 21.21(a)) from the exceptions to the requirements (§ 21.21(b), (c) and (d)). In § 21.21(a), we acknowledge all of the regulations, including the CITES regulations at 50 CFR part 23, that apply to imports and exports of migratory birds and their parts, eggs, and nests. These revisions will help ensure that importers and exporters of migratory birds or their parts, eggs, or nests understand all the requirements applicable to their imports and exports.

Exceptions for import permits (§ 21.21(b)): Current § 21.21(a)(1) provides the requirements for import permits; it does not provide any exceptions to import permit requirements for migratory birds or their parts, eggs, or nests. Current § 21.21(a)(2) does have one import permit exception for raptors for falconry that will be discussed later in this document. We add, in a new § 21.21(b), a provision to allow the importation and possession without an import permit of migratory game birds in the families Anatidae, Columbidae, Gruidae, Rallidae, and Scolopacidae that were lawfully hunted in a foreign country. The imported specimens can be carcasses, skins, or mounts. They must be accompanied by evidence of lawful export from the country of origin and by any other necessary permits, such as a

CITES permit. These families may be legally hunted under the provisions of the migratory bird treaties with Canada and Mexico, though hunting seasons have not been established for all of them. We will allow import of birds in these families that were legally hunted outside the United States without requiring an import permit to do so. However, should we determine that hunting of any species in these families is not consistent with the conservation of the species, we will disallow import of that species if it was originally acquired by hunting.

Exceptions for export permits (§ 21.21(c)): As stated above, current § 21.21(a) provides the requirements for import and export permits, and exceptions to these requirements. Current § 21.21(a) does provide exceptions to the export permit requirements for certain captive-bred migratory game birds exported to Canada or Mexico and for raptors used for falconry exported to or imported from Canada or Mexico. Our § 21.21(c) retains these exceptions, with changes described below.

Instead of simply directing readers to 50 CFR 21.13(b) of the regulations for the marking requirements for captive-bred migratory game birds exported to Canada or Mexico, we detail those requirements in this new paragraph. This revision will help ensure that exporters of migratory game birds understand the exceptions to our export permit requirements.

In addition, we add a provision to allow export of lawfully acquired, captive-bred raptors without an additional export permit, provided that the exporter holds both a valid raptor propagation permit and a CITES export permit, and has full documentation of the lawful origin of the raptor(s). The raptor(s) would also have to be properly identified by a captive-bred raptor band (see § 21.30 of this subpart C of part 21). This change will eliminate redundant permitting reviews for export of captive-bred raptors and help ensure that border inspectors can easily and accurately identify birds for export.

The exception to the import and export permit requirements for falconry birds under a CITES passport currently resides in § 21.21(a)(2), with the general export permit requirements for migratory birds. We moved the exception to the requirements for falconry birds into its own paragraph (new § 21.21(d)) so that it is easier to find in the regulations. For clarity, we revise the language concerning the exception and acknowledge the CITES regulations at 50 CFR part 23 that apply to exports of these birds. This revision

will help ensure that importers and exporters of falconry birds understand this exception to the temporary export and import requirements for falconry birds. We believe that this change will help readers more easily find this information.

We believe it is reasonable to allow the temporary export and subsequent import of birds held for falconry out of the United States. Therefore, a provision in the regulation makes it clear that we allow this action. The provision states that unless a permittee has the necessary CITES permit or certificate to permanently export a raptor from the United States, he or she must bring any raptor transported out of the country for use in falconry back to the United States when he or she returns. However, if the raptor dies or is lost, the permittee must document the loss of the bird as required by his or her State falconry regulations and any conditions on the CITES document.

Inspection procedures (§ 21.21(e)): The current § 21.21 is silent on inspection procedures for imported and exported migratory birds and their parts, eggs, and nests, even though these inspections occur regularly. We correct language in our proposed rule, in which we stated that Customs and Border Protection (CBP) would be allowed to inspect any migratory birds brought into or out of the country. Doing so would be contrary to the provisions in 50 CFR part 14 and 23. 50 CFR § 14.54 does not authorize CBP to act on the Service's behalf for any export. In addition, CBP is not authorized under 50 CFR 23 to validate CITES documents issued for the export of CITES listed migratory birds or for migratory birds traveling on a CITES pet passport.

Application procedures (§ 21.21(f)): Current § 21.21(b) provides the application procedures for permits to import or export migratory birds or their parts, eggs, or nests. The current regulations set forth the information required on the application forms. The "additional information," specified in current § 21.21(b)(1) through (b)(6), has been incorporated into the relevant application forms, so we remove that information requirement from the regulations. Instead, we list the specific forms required to apply for an import or export permit (FWS form 3-200-6) or a permit for scientific collecting (FWS form 3-200-7). We also add language reminding applicants of the application fee that must accompany their application to import or export migratory birds or their parts, eggs, or nests. This change helps ensure that persons interested in importing or

exporting know which form to complete and its associated application fee.

Service criteria for issuing a permit (§ 21.21(g)): The current § 21.21 is silent on the criteria we consider when deciding whether or not to issue a permit to import or export migratory birds or their parts, eggs, or nests. We include the issuance criteria in this paragraph to ensure that the public understands how we make our decisions.

Standard conditions for a permit (§ 21.21(h)): The current § 21.21(c) provides information on additional permit conditions. We retain this information, but rewrite it for clarity in this paragraph. We also add a reference to 50 CFR part 14 to ensure that importers and exporters of migratory birds or their parts, eggs, or nests understand that they must also comply with the general regulations concerning the importation, exportation, and transportation of wildlife.

Term of permit (§ 21.21(i)): The current § 21.21(d) provides information on the length of time that a permit is valid. We extend the maximum time for which an import or export permit is valid from 3 to 5 years. In recent years, as we have completed regulations revisions we have extended the duration of some permit types that we believe have a limited potential effect on bird populations. This eases the burden on both permittees and our permit examiners. We believe that is also true of the import and export regulations, so this rule extends the term of an import and export permit.

Plain Language: Throughout our revisions to § 21.21, we have used short sentences and active voice to make the regulations easy to understand.

#### **What Comments on the Proposed Rule Did We Receive?**

We received 58 sets of comments on the proposed rule. The following are concerns expressed about provisions of the regulations and suggestions for changes to them.

*Issue: Cross-border temporary export and import of falconry birds.*

- "I am concerned about the level of documentation required of falconers for a crossing and would prefer a clear definition concerning the sufficiency of documentation needed."

- "Due to the option of Customs being able to do the inspection, please clearly state there is no fee for the inspection. Some falconers are still being charged \$195 each way for both the inspection and crossing at non-designated port of entry."

- "Please also clearly state that there is no inspection fee, because in the past

some falconers have been charged exorbitant fees. If at all possible, please exempt falconers from the requirement to use only specially designated ports of entry."

- "Almost all of the birds used in falconry are banded and/or captive bred. There will be a few wild caught birds with plastic bands and a few non banded birds but in all cases the falconer on the U.S. side will arrive with a 3-186A and a health certificate. At that point it should be up to the Canadian customs agents to accept or reject a person's entry into the country based on having the health certificate and having birds that match the description on the 3-186As (or equivalent). The same would apply to Canadians coming south. The need for an expensive U.S. Fish and Wildlife Service inspection coming and going needs to be dropped. A falconer should be able to cross at any port of entry without the need for either a U.S. or Canadian health inspector being present. Again, crossing with your dog or cat does not require such restrictions. There really can't be any legitimate health concerns as the very same falcons are flying overhead moving north and south over the borders every year."

- "Since the USFWS proposes to allow either a Service inspector or a Customs inspector to examine the birds at the border (which I think is very appropriate and agree with) and since birds held for falconry appear to be exempt (under 21.21(d), assuming all other requirements are met) \* \* \* is it possible that falconers could also be granted an exemption from "designated ports" and not be required to file a 3-200-2 for a Designated Port Exception? This would certainly help ease the paperwork requirements on both the falconer and the Service."

- "Falconers meeting the documentation requirements should be exempt from specific designated ports of entry and should be able to use any legal point of entry with either customs or UFWS able to perform inspections."

- "Concerning documentation of legally held raptors crossing borders, the CITES international authorities have accepted a "passport" system, now currently widely in use by falconers in the Middle East. Such documentation includes a microchip explicitly tying the passport to the individual bird described. It is good, I believe, for the life of the bird. Use of such a document in lieu of any import/export permitting would greatly facilitate crossing procedures and, as already accepted by CITES, should obviate any further significant governmental procedural

harangues regarding adoption of its use."

- "We also agree with proposed 21.21(e) that will allow inspections by either USFWS inspectors or Customs and Border Protection. However, we request a statement that falconers who are transporting birds for the purpose of practicing falconry are exempt from designated ports of entry and may use any legal point of entry. It is clear when the USFWS states that "We believe it is reasonable to allow temporary transport of birds held for falconry out of the United States. Therefore, a proposed provision in the regulation makes it clear that we allow this action. The provision states that unless you have the necessary CITES permit or certificate to permanently export a raptor from the United States, you must bring any raptor you transport out of the country for use in falconry back to the United States when you return. However, if the raptor dies or is lost, the permittee must document the loss of the bird as required by his or her State falconry regulations and any conditions on the CITES document." Therefore, is it not also reasonable that falconers transporting birds for the purpose of practicing falconry, be exempt for the provision of "designated ports"?"

- "My personal recommendation includes both wild and CB [captive-bred] raptors being allowed to cross (because falconers use both CB and wild taken raptors in this sport) at any designated port of entry. The reason for this request (any port of entry) is that most border crossings will be for "hunting falconry meets" and these take place away from large cities, etc. So being able to cross the border at an entry that is close to the "hunting meet location" is critically important to the falconer."

- "Many of the designated and non-designated ports of entry can be many miles from your intended destination, and in the case of Canada, due to the lack of an elaborate road system along the U.S. border, can force you to detour many additional miles to reach a designated or non-designated port. Even when a non-designated port of entry is reached, planning must occur to ensure that the USFWS Agent is available to review the required documentation. This is an unneeded requirement and Customs agents are amply qualified to verify the documentation against the band numbers of the raptors. Crossing the border only at a designated or non-designated port of entry is an overly burdensome requirement and currently prevents crossings after normal business hours and on weekends. *Entry at any*

*port of entry, during their normal operating hours, should be allowed."*

- "Please consider allowing either the U.S. Fish and Wildlife Service or Customs to conduct inspections at border crossings."

- "Service actions at the time of my 1996 crossing make any "designated port of entry" requirement ludicrous! My Canadian destination was some two hundred miles from my Montana hunting residence. To comply with your designated port requirement, however, those crossings necessitated my driving some four hundred additional miles each way. Further, in compliance with Service instructions I had made advanced appointments for the required personal Service-conducted inspection, both coming and going, with the Service resident "agent" agreeing as to both times and dates of my crossings. Despite my compliance with both agreed-upon appointments, no Service agent ever appeared, having told his Customs-inspector associates to just go ahead and pass me (and my bird) through. To add injury to insult (and I use such term explicitly), my use of the Service-designated port required me to pass through yet another province enroute where falconry was not yet legal, necessitating all the paperwork for yet another set of permits."

- "It is possible for our raptors to unintentionally pursue game across the U.S. border which could result in needing to cross the border to retrieve the raptor. Please consider language that would specifically allow the USFWS LE authority to allow falconers to recover lost birds across the US/Canada border without the typical 30-90 day wait period for a CITES permit."

- "[T]here should be policy that allows a falconer to recover a lost bird across the U.S./Canada border without the typical 30-90 day wait period for a CITES permit. A statement that specifically allowed USFWS LE authority and discretion in this scenario is requested."

- Add "A statement specifically allowing USFWS LE authority to allow falconers to recover lost birds across the U.S./Canada border without the typical 30-90 day wait period for a CITES permit."

- "I should be able to recover a lost bird without need of a CITES permit also."

*Response:* These comments all address CITES-related and 50 CFR part 14 requirements that are not the subject of this rulemaking. All wildlife must pass through a Service-designated port out of or into the United States unless authorized otherwise by a designated port exception permit. We cannot make

an exception for falconers. U.S. Customs and Border Protection (CBP) can only act on the Service's behalf for imports, when their role is to collect documentation for later investigation by the Service. CBP is not authorized to validate CITES documents, either upon export, or for CITES pet passports upon import. Nor is CBP authorized to operate on behalf of the Service for exports, primarily because CBP generally does not process exports.

A falconer can get a CITES Certificate of Ownership for Personally Owned Wildlife, or "pet passport" (Form 3-200-64) that facilitates temporary export and import of a falconry bird out of and into the United States. The 3-200-64 form "is used to request a passport-like certificate for a single animal (one application per pet)." A "pet passport" certificate may be valid for up to 3 years for multiple border crossings. If a falconer has more than one raptor that he or she wishes to temporarily export and import out of and back to the United States, he or she should get a CITES "pet passport" for each bird.

*Issue:* "If form 3-177 has not been pre-approved by USFWS, Customs should be allowed to stamp it."

- "Review of the required supporting documentation can easily be performed by the Border or Customs agents. Review by Border agents have been utilized and accepted by the FWS at times when FWS agents have not been available. Having only FWS agents to verify documentation is an unnecessary requirement and only serves as a punitive source of revenue for the FWS (\$195 each way) to have a FWS Agent review and stamp the documentation. Allowing Customs to check and stamp all documentation (CITES & 3-177 forms) is probably the most important requested change. Not only would this allow for a much more streamlined process but would allow crossing at times other than those hours when a FWS Agent is on duty."

*Response:* We require a Form 3-177 for all wildlife imports and exports, regardless of whether a CITES document is required. CBP cannot stamp the Service's form. CBP may, however, collect it for later investigation by FWS, in which case CBP is conditionally allowing entry subject to FWS approval.

Fees for permits, border inspections, and other fees are not set in this regulation.

*Issue:* "In proposed 21.21(b), (c) and (d) there contains a section, which states in part, that compliance with parts 14, 15, 17, 21, 22 and 23 is required. While I agree, may I request that the title of each of those parts be included? (i.e.: 50

CFR part 14: Importation, Exportation, and Transportation of Wildlife)"

*Response:* We made this change. It adds clarity to the rule.

*Issue:* "Regarding permanent export, thank you for increasing the permit length to 5 years. However, this permit still seems redundant, as it could be issued automatically with each CITES permit. Even if a raptor propagator is giving a bird to a friend, they are still treated as commercial and charged extra fees in addition to the CITES permit."

*Response:* If you have a CITES permit, you do not need an export permit under this rule. In paragraph (c)(2), we stated that an import/export permit is not needed for the export of live lawfully-acquired, captive-bred raptors by a raptor propagation permittee if he or she has a CITES export permit or certificate issued under part 23 for the export. The language is unchanged in this final rule.

*Issue:* *The falconry transport provision did not allow for temporary export and import of wild-caught falconry birds without an import/export permit.*

- "The first [issue] includes adding both WILD taken and captive bred birds to this exemption. We must still meet the CITES requirements to receive a Passport for both, so why not allow a falconer to take all of his/her falconry birds whether wild or captive bred?"

- "In section (d), may I request some additional clarification? It does not appear that wild caught raptors, transported for falconry are clearly being considered. I am sure this is a simple oversight and not your intention. Some wild caught birds are not required to be banded by the various states in the U.S. For those birds that are not required to be banded, would a completed 3-186A suffice for documentation?"

*Response:* We agree that temporary export and import of wild-caught falconry birds should be allowed. We added appropriate language to the regulations. However, a falconry raptor taken across a U.S. border will need to be banded unless it has been exempted from banding because of problems with bands placed on the bird, or if it has an implanted ISO-compliant microchip that will allow us to identify it.

*Issue:* "We also feel it is vital to include in 21.21(d) or a separate section, that transport across the border for falconry birds for the purpose of practicing falconry (i.e. a weekend hunt), not just at falconry meets, is allowed. The Service states this and we feel it is appropriate to place such verbiage in the regulations. We also feel it is vital that such transports also do not require an import/export permit."

*Response:* The language in the proposed rule addressed the practice of falconry—not just falconry meets. No change from the proposed regulation is needed, nor do we require a migratory bird import/export permit. However, a CITES document would be required, even for a short weekend hunt.

*Issue:* "[T]he transport of semen should specifically be allowed without a permit due to its time sensitive nature."

*Response:* The MBTA addresses migratory birds and their parts, eggs, and nests. We may not exempt semen from the provisions of the Act.

We made no major changes to the proposed rule based on comments we received.

## Required Determinations

### Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

### Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the

factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities, because the changes we are proposing are intended primarily to simplify export for a limited number of raptor propagators.

There are no costs associated with this regulatory change. Consequently, we certify that because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It will not have a significant impact on a substantial number of small entities.

a. This rule will not have an annual effect on the economy of \$100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following: a. This rule does not "significantly or uniquely" affect small governments. A small government agency plan is not required. Actions under this regulation will not affect small government activities in any significant way.

b. This rule does not produce a Federal mandate of \$100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

#### *Takings*

In accordance with E.O. 12630, this rule does not have significant takings implications because it does not contain a provision for taking of private property. Therefore, a takings implication assessment is not required.

#### *Federalism*

This rule will not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' ability to manage

themselves or their funds. No significant economic impacts are expected to result from changing exemptions in migratory bird permit requirements.

#### *Civil Justice Reform*

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

We examined these regulations for compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We may not collect or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. The Office of Management and Budget approved the information collection requirements for this part, and assigned OMB Control Number 1018-0022. There are no new information collection requirements associated with this regulatory change.

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432-437(f), and Part 516 of the U.S. Department of the Interior Manual (516 DM). We have no data on the number of legally hunted birds that individuals might wish to import, though we doubt that the number will be large. Because these species are legally hunted elsewhere, we doubt that this regulations change will appreciably change the impact of hunting on these species. Therefore, we do not believe that there will be a significant environmental impact due to the regulations change.

#### *Environmental Consequences of the Action*

The primary change is to allow export of lawfully-acquired, captive-bred raptors without an export permit provided that the exporter holds a valid raptor propagation permit and has been issued a Convention on International Trade in Endangered Species (CITES) export permit. This change should eliminate redundant permitting required for this activity. Another important change is to allow the import of legally-acquired migratory game birds without a permit. A permit is currently required to import such species. We believe that there are no significant environmental impacts of this action.

Socioeconomic. This rule will not have discernible socioeconomic impacts.

Migratory bird populations. This rule will not affect migratory bird populations.

Endangered and threatened species. The regulation is for migratory bird species that are not threatened or endangered. It will not affect threatened or endangered species or critical habitats.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the Tribes' ability to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

#### *Energy Supply, Distribution, or Use (E.O. 13211)*

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule will affect only import and export of birds in limited circumstances, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### *Compliance With Endangered Species Act Requirements*

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). The regulations change will not affect listed species.

**List of Subjects in 50 CFR Part 21**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Regulation Promulgation**

■ For the reasons stated in the preamble, we amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

**PART 21—MIGRATORY BIRD PERMITS**

■ 1. The authority citation for part 21 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

■ 2. Revise § 21.21 to read as follows:

**§ 21.21 Import and export permits.**

(a) *Permit requirement.* Except as provided in paragraphs (b), (c), and (d) of this section, you must have a permit to import or export migratory birds, their parts, nests, or eggs. You must meet the applicable permit requirements of the following parts of this subchapter B, even if the activity is exempt from a migratory bird import or export permit:

- (1) 13 (General Permit Procedures);
- (2) 14 (Importation, Exportation, and Transportation of Wildlife);
- (3) 15 (Wild Bird Conservation Act);
- (4) 17 (Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants);
- (5) 20 (Migratory Bird Hunting);
- (6) 21 (Migratory Bird Permits);
- (7) 22 (Eagle Permits); and
- (8) 23 (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)).

(b) *Game bird exception to the import permit requirements.* If you comply with the requirements of parts 14, 20, and 23 of this subchapter B, you do not need a migratory bird permit to import or possess migratory game birds in the families Anatidae, Columbidae, Gruidae, Rallidae, and Scolopacidae for personal use that were lawfully hunted by you in a foreign country. The game birds may be carcasses, skins, or mounts. You must provide evidence that you lawfully took the bird or birds in, and exported them from, the country of origin. This evidence must include a hunting license and any export documentation required by the country of origin. You must keep these documents with the imported bird or birds permanently.

(c) *General exceptions to the export permit requirements.* You do not need a migratory bird export permit to:

(1) Export live, captive-bred migratory game birds (see § 20.11 of this subpart) to Canada or Mexico if they are marked by one of the following methods:

- (i) Removal of the hind toe from the right foot;
- (ii) Pinioning of a wing by removal of all or some of the metacarpal bones of one wing, which renders the bird permanently incapable of flight;
- (iii) Banding of one metatarsus with a seamless metal band; or
- (iv) A readily discernible tattoo of numbers and/or letters on the web of one foot.

(2) Export live, lawfully-acquired, captive-bred raptors provided you hold a valid raptor propagation permit issued under § 21.30 and you obtain a CITES permit or certificate issued under part 23 to do so. You must have full documentation of the lawful origin of each raptor, and each must be identifiable with a seamless band issued by the Service, including any raptor with an implanted microchip for identification.

(d) *Falconry birds covered under a CITES “pet passport.”* You do not need a migratory bird import or export permit to temporarily export and subsequently import a raptor or raptors you lawfully possess for falconry to and from another country for use in falconry when the following conditions are met:

- (1) You must meet applicable requirements in part 14 (Importation, Exportation, and Transportation of Wildlife) of this subchapter B.
- (2) You may need one or more additional permits to take a bird from the United States or to return home with it (see 50 CFR part 15 (Wild Bird Conservation Act), part 17 (Endangered and Threatened Wildlife and Plants), and part 23 (Convention on International Trade in Endangered Species of Wild Fauna and Flora)).

(3) Each raptor must be covered by a CITES certificate of ownership issued under part 23 of this chapter. You must have full documentation of the lawful origin of each raptor (a copy of a propagation report with band number or a 3–186A report), and each must be identifiable with a seamless band or a permanent, nonreusable, numbered Fish and Wildlife Service leg band issued by the Service, including any raptor with an implanted microchip for identification. We may exempt a raptor from banding because of health concerns, but you must provide proof of the exemption from your falconry permitting authority.

(4) You must bring any raptor that you export out of the country for falconry under a CITES “pet passport” back to the United States when you return.

(5) If the raptor dies or is lost, you are not required to bring it back, but you must report the loss immediately upon your return to the United States in the manner required by the falconry regulations of your State, and according to any conditions on your CITES certificate.

(e) *Inspection of imported or exported migratory birds.* All migratory birds imported into, or exported from, the United States, and any associated documentation, may be inspected by the Service. You must comply with the import and export regulations in Part 14 of this chapter.

(f) *Applying for a migratory bird import or export permit.* You must apply to the appropriate Regional Director—Attention Migratory Bird Permit Office. You can find the address for your Regional Director in § 2.2 of subchapter A of this chapter. Your application package must include a completed application (form 3–200–6, or 3–200–7 if the import or export is associated with an application for a scientific collecting permit), and a check or money order made payable to the U.S. Fish and Wildlife Service in the amount of the application fee for permits issued under this section, as listed in § 13.11 of this chapter.

(g) *Criteria we will consider before issuing a permit.* After we receive a completed import or export application, the Regional Director will decide whether to issue you a permit based on the general criteria of § 13.21 of this chapter, and whether you meet the following requirements:

- (1) You are at least 18 years of age;
- (2) The bird was lawfully acquired; and
- (3) The purpose of the import or export is consistent with the conservation of the species; and
- (4) For an import permit, whether you are authorized to lawfully possess the migratory bird after it is imported.

(h) *Are there standard conditions for the permit?* Yes, standard conditions for your permit are set forth in part 13 of this subchapter B. You must also comply with the regulations in part 14 (Importation, Exportation, and Transportation of Wildlife). We may place additional requirements or restrictions on your permit as appropriate.

(i) *Term of a migratory bird import and export permit.* Your migratory bird import or export permit will be valid for not more than 5 years. It will expire on the date designated on its face unless it is amended or revoked.

Dated: August 4, 2008.  
**David M. Verhey,**  
*Acting Assistant Secretary for Fish and Wildlife and Parks.*  
 [FR Doc. E8-18774 Filed 8-12-08; 8:45 am]  
**BILLING CODE 4310-55-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

[Docket No. 070720400-81019-02]

RIN 0648-AV30

**Fisheries in the Western Pacific; Precious Corals Fisheries; Black Coral Quota and Gold Coral Moratorium**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements Amendment 7 to the Fishery

Management Plan for Precious Coral Fisheries of the Western Pacific Region (Precious Corals FMP). The rule designates the Au'au Channel, Hawaii, black coral bed as an "Established Bed" with a harvest quota of 5,000 kg every two years that applies to Federal and State of Hawaii waters, and implements a 5-year moratorium on the harvest of gold coral throughout the U.S. western Pacific. This rule is intended to prevent overfishing and achieve optimum yields of black coral resources, and to prevent overfishing and stimulate research on gold corals.

**DATES:** This final rule is effective September 12, 2008.

**ADDRESSES:** Amendment 7 is available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Brett Wiedoff, NMFS PIR, 808-944-2272.

**SUPPLEMENTARY INFORMATION:** This final rule is accessible on the internet at: [www.gpoaccess.gov/fr/](http://www.gpoaccess.gov/fr/).

Since 1980, almost all of the black coral harvested around the Hawaiian Islands has been taken from the Au'au Channel Bed. The biomass of the Au'au Channel black coral population has decreased by at least 25 percent in the last 30 years, and data collected during submersible dives has shown a decline in both recruitment and relative abundance of legal-sized black coral colonies. The decline may be related to both fishing pressure and competition with the highly-invasive soft coral, *Carijoa riisei*, or snowflake coral, which has been found overgrowing large areas of black coral habitat. The potentially-devastating snowflake coral, combined with fishing pressure, warrants management action and further research.

This final rule designates the Au'au Channel Bed (Fig. 1) as an "Established Bed" with a harvest quota for black coral of 5,000 kg (11,023 lb) every two years. This quota applies in both Federal and State of Hawaii waters, and all other existing Federal restrictions continue to apply.

Figure 1. Au'au Channel Established Precious Corals Bed

