DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AV10

Migratory Bird Permits; Removal of Migratory Birds From Buildings

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 removal of migratory birds (other than federally listed threatened or endangered species, bald eagles, and golden eagles) from inside buildings in which the birds may pose a threat to themselves, to public health and safety, or to commercial interests.

DATES: This rule is effective on November 5, 2007.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

FOR FURTHER INFORMATION CONTACT: George T. Allen, Wildlife Biologist, 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 delegated the primary responsibility for managing migratory birds. The delegation is authorized by 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. A list of migratory bird species protected by the MBTA can be found at 50 CFR 10.13.

To simplify removal of migratory birds from buildings in which their presence may be a threat to the birds, to public health and safety, or to commercial interests, we will allow the removal of any migratory bird, except a threatened or endangered species, a bald eagle, or a golden eagle, from the inside of any building in which a bird might be trapped, without requiring a migratory bird permit to do so. The bird must be captured using a humane method and, in most cases, immediately released to the wild. This regulation does not allow removal of birds or nests from the outside of buildings without a permit. Removal of active nests from inside buildings must be conducted by a federally permitted migratory bird rehabilitator.

This regulatory addition will facilitate removal of birds from buildings, which would otherwise require a migratory bird permit. Our changes are detailed below in the Regulation Promulgation section of this document.

What Comments on the Proposed Rule Did We Receive?

We received six sets of comments on the proposed rule. The comments raised relatively few issues, which we discuss here.

Issue: One commenter believed that the rule should include bird nests.

Response: Removal or destruction of nests of most species of birds when the nests are not in use is allowed. With this regulations change, an active nest may

be removed from inside a building with the assistance of a permitted rehabilitator. We clarified the relevant language in this rule.

Issue: A commenter suggested that the words ''and for buildings undergoing renovation or demolition'' be added after the words ''commercial interests.''

Response: Renovation and demolition of buildings can be conducted outside the nesting season, which is relatively short for most species. A nest of any species protected under one or more of the Migratory Bird Conventions is protected during the nesting season. This provision is unchanged by this rule.

Comment: ''We suggest this proposal should more specifically indicate what time frame is meant by 'promptly' as used in the sections on releasing birds and on transferring injured and orphaned birds to rehabilitators.''

Response: We replaced the term ''promptly'' with ''immediately,'' and qualified this requirement slightly by requiring that an exhausted, ill, injured, or orphaned bird be sent to a rehabilitator.

Comment: ''I fear that if you open up this wildlife management category as is proposed, there will be a resulting unorthodox influx of raptors into warehouse buildings across the United States to clean-out invasive bird species. The claim will be they came through the doors when, actually, many will have been intentionally introduced by unscrupulous lay-people and store managers having introduced the raptor to its captivity and peril but unable to get it out. I already see and hear about many of these every year. However, something does need to happen to improve the raptor recovery service response time to these corporations, but something also needs to be done to prevent the criminal activity of capturing a free raptor in the environment and placing it in harms way into a ''box store'' environment to clean-out invasive species. All too often, these magnificent wild raptors perish trying to get out or by being mishandled.''

Response: In most cases this action is not legal, but we added language to the regulation to address this concern.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget has determined, in accordance with the criteria in Executive Order (E.O.) 12866, that this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of $100 million or more. It will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There are minimal costs associated with this rule.

b. This rule does not create inconsistencies with other agencies' actions. It deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

c. There are no entitlements, grants, user fees, or loan programs associated with the regulation of birds in buildings.

d. This rule does not raise novel legal or policy issues, and is in compliance with other laws, policies, and regulations.

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 we certify that this action will not have a significant economic impact on a substantial number of small entities, because the changes we are making are intended primarily to simplify removal of birds from structures in which the birds may either pose a threat to public health and safety or commercial interests, or be at risk themselves.

The costs associated with this change to our regulations would be very small. 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, so a regulatory flexibility analysis of this action is not required.

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 will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule will not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

No significant economic impacts are expected to result from allowing individuals, businesses, or government offices to remove migratory birds from buildings. This rule will not interfere with the States' ability to manage themselves or their funds, nor does it have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132.

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 under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There will be no new information collection requirements associated with this change to our regulations. 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.

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). A change to our regulations allowing the removal of migratory birds from buildings will not have a significant environmental impact.

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

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 would affect only removal of birds from structures 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.

Environmental Consequences of the Action

The change we are making is to allow people to remove birds protected under the Migratory Bird Treaty Act from buildings. We do not expect significant environmental impacts of this action.

Socioeconomic. We do not expect the action to have discernible socioeconomic impacts.

Migratory bird populations. This rule will not alter the take of migratory birds from the wild. It will not change migratory bird populations.

Endangered and Threatened Species. The regulation is for migratory birds other than threatened or endangered species. It will not affect threatened or endangered species or habitats important to them.

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 change to our regulations will not affect listed species.

Author

The author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610.

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. Amend § 21.12 by:
■ a. Revising the introductory paragraph and paragraph (a);
■ b. Redesignating paragraphs (b), (c), and (d) as paragraphs (b)(1), (b)(2), and (c) and adding a new heading to paragraph (b);
■ c. Adding a heading to newly designated paragraph (c); and
■ d. Adding a new paragraph (d), to read as set forth below.

§ 21.12 General exceptions to permit requirements.

The following persons or entities under the following conditions are exempt from the permit requirements:

(a) *Employees of the Department of the Interior (DOI):* DOI employees authorized to enforce the provisions of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703–(711), may, without a permit, take or otherwise acquire, hold in custody, transport, and dispose of migratory birds or their parts, nests, or eggs as necessary in performing their official duties.

(b) *Employees of certain public and private institutions:*

(1) * * *

(2) * * *

(c) *Licensed veterinarians:*

* * * * *

(d) *General public:* Any person may remove a migratory bird from the interior of a building or structure under certain conditions.

(1) You may humanely remove a trapped migratory bird from the interior of a residence or a commercial or government building without a Federal permit if the migratory bird:

(i) Poses a health threat (for example, through damage to foodstuffs);

(ii) Is attacking humans, or poses a threat to human safety because of its activities (such as opening and closing automatic doors);

(iii) Poses a threat to commercial interests, such as through damage to products for sale; or

(iv) May injure itself because it is trapped.

(2) You must use a humane method to capture the bird or birds. You may not use adhesive traps to which birds may adhere (such as glue traps) or any other method of capture likely to harm the bird.

(3) Unless you have a permit that allows you to conduct abatement activities with a raptor, you may not release a raptor into a building to either frighten or capture another bird.

(4) You must immediately release a captured bird to the wild in habitat suitable for the species, unless it is exhausted, ill, injured, or orphaned.

(5) If a bird is exhausted or ill, or is injured or orphaned during the removal, the property owner is responsible for immediately transferring it to a federally permitted migratory bird rehabilitator.

(6) You may not lethally take a migratory bird for these purposes. If your actions to remove the trapped migratory bird are likely to result in its lethal take, you must possess a Federal Migratory Bird Permit. However, if a bird you are trying to remove dies, you must dispose of the carcass immediately unless you have reason to believe that a museum or scientific institution might be able to use it. In that case, you should contact your nearest Fish and Wildlife Service office or your State wildlife agency about donating the carcass.

(7) For birds of species on the Federal List of Threatened or Endangered Wildlife, provided at 50 CFR 17.11(h), you may need a Federal threatened or endangered species permit before removing the birds (see 50 CFR 17.21 and 50 CFR 17.31).

(8) You must have a permit from your Regional migratory bird permits office to remove a bald eagle or a golden eagle from a building (see 50 CFR Part 22).

(9) Your action must comply with State and local regulations and ordinances. You may need a State, Tribal, or Territorial permit before you can legally remove the bird or birds.

(10) If an active nest with eggs or nestlings is present, you must seek the assistance of a federally permitted migratory bird rehabilitator in removing the eggs or nestlings. The rehabilitator is then responsible for handling them properly.

(11) If you need advice on dealing with a trapped bird, you should contact your closest Fish and Wildlife Service office or your State wildlife agency.

Dated: September 4, 2007.

David M. Verhey,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–19712 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–55–P