

RAPTOR PROCLAMATION

1. Introduction.

The Texas Parks and Wildlife Commission adopts the repeal of §§65.261-65.267 and 65.269-65.277 and new §§65.261-65.277, concerning the Raptor Proclamation. Sections 65.264, 65.265, 65.267, 65.268, and 65.272 are adopted with changes to the proposed text as published in the December 25, 2009, issue of the Texas Register (34 TexReg 9350). The repeals and §§65.261-65.263, 65.266, and 65.269-65.277 are adopted without changes and will not be republished.

2. Justification for the Rules.

The practice of falconry in the United States is regulated at both the state and federal levels. The federal authority to regulate falconry is derived from the Migratory Bird Treaty Act. (See 16 U.S.C. §703 et seq.) Under the Migratory Bird Treaty Act, and the doctrine of federal preemption, each state is authorized to adopt falconry rules that are more restrictive than this federal statute and the associated federal falconry regulations, but not less restrictive. (16 U.S.C. §708).

Until 2009, under the federal falconry regulations, an applicant for a state falconry permit was required to apply for a federal falconry permit concurrently with an application for a state permit. 16 CFR §21.29, prior to amendment at 73 FR 59447 (October 8, 2008), The United States Secretary of the Interior, through the U.S. Fish and Wildlife Service (“FWS” or “the Service”), has recently adopted significant revisions to the federal falconry regulations. (See 50 CFR §29.21, et seq.) Part of these revisions allows states that are certified by FWS as having state regulations that meet the federal falconry standards to issue state falconry permits without requiring the applicant to concurrently apply for a federal falconry permit. Texas falconers have expressed a strong desire to be administratively regulated by the department alone.

3. Additional Information.

The full text of this rulemaking (including complete justification for the rules, a detailed description of the changes, and responses to public comment) can be found online at the *Texas Register* (www.sos.state.tx.us).

4. Statutory Authority.

The new sections are adopted under Parks and Wildlife Code, Chapter 49, which authorizes the commission to prescribe rules for the taking, capture, possession, propagation, transportation, export, import, and sale of raptors, time and area from which raptors may be taken or captured, and species that may be taken or captured; provide standards for possessing and housing raptors held under a permit; prescribe annual reporting requirements and procedures; prescribe eligibility requirements and fees for and issue any falconry, raptor propagation, or nonresident trapping permit; and require and regulate the identification of raptors held by permit holders; §61.054 , which requires the commission to specify the means or method that may be used to hunt, take, or possess game animals, game birds, or aquatic animal life; and Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§65.261. Applicability.

(a) This subchapter applies to all species of raptors indigenous to the state of Texas.

(b) To the extent that a provision of this subchapter conflicts with any provision of 50 CFR Part 21 governing the possession and use of raptors, the federal regulation shall prevail.

(Effective June 3, 2010)

§65.262. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Abatement permit--A special purpose permit issued by the FWS that allows the use of raptors to control nuisance wildlife.

(2) Captive bred--Raptors, including eggs hatched in captivity, from parents that mated or otherwise reproduced in captivity.

(3) Educational display--Activities conducted for the purposes of encouraging understanding of falconry, the management and conservation of raptors, or furthering awareness and understanding among the general public of the biology and ecological roles of protected wildlife.

(4) Eyass--A young raptor that is still in the nest.

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(5) Falconer--A person legally allowed to take and fly raptors under a permit issued under the authority of Parks and Wildlife Code, Chapter 49, the laws of another state, or by the federal government.

(A) An apprentice falconer is a person who holds an apprentice falconry permit.

(B) A general falconer is a person who holds a general falconry permit.

(C) A master falconer is a person who holds a master falconry permit.

(6) FWS--The United States Fish and Wildlife Service.

(7) Hack--Temporary release of a raptor to the wild. Hacking is a method used by falconers to condition raptors for falconry.

(8) Holding--Retaining in captivity, but does not include the temporary possession of a raptor that is accidentally trapped and must be released.

(9) Imping--Using a feather to replace a broken feather of a raptor.

(10) Imprint--A raptor that is hand-raised in isolation from the sight of other raptors from two weeks of age until it is fully feathered.

(11) Passage bird--A raptor less than one year of age that has left the nest.

(12) Physician's statement--A written statement from a physician attesting that a long-term or permanent medical condition prevents a person from participating in trapping activities.

(13) Raptor--A migratory bird of the Order Falconiformes or the Order Strigiformes.

(14) Release to the wild--Permanent release of a raptor to an area where it is capable of leaving at will.

(15) Sponsor-- A general or master falconer who agrees to supervise the training of an apprentice falconer.

(16) Take--To trap or capture, or attempt to trap or capture, a wild raptor.

(17) Transfer--The change of possession of a raptor from one permitted person to another permitted person by mutual agreement and without the exchange or offer to exchange money or anything of value as a condition of the change in possession.

(18) Type 1 band--A FWS plastic leg band, issued by the department, which must be attached to gyrfalcons, peregrine falcons, goshawks, and Harris' hawks.

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(19) Type 2 band--A FWS metal leg band, issued by the department, which must be attached to captive-bred raptors. This includes FWS replacement bands made of plastic.

(20) Weathering area--Outdoor facilities providing a raptor protection from the environment.

(21) Wild raptor--A raptor whose conception was not the result of the breeding of raptors in captivity.

(Effective June 3, 2010)

§65.263. General Provisions.

(a) No person shall take or possess a raptor in this state unless that person possesses valid state and federal permits (if required) to do so, including a Texas resident or nonresident hunting license, as applicable.

(b) A person who is not a resident of this state may not hold any permit issued under this subchapter other than a nonresident trapping permit.

(c) A person permitted to possess a live raptor under this subchapter shall:

(1) provide all permits, licenses, and documentation required to be maintained by this subchapter and the Parks and Wildlife Code upon the request of a department employee acting within the scope of official duties; and

(2) have in immediate possession all required permits, licenses, and documentation when in possession of a raptor away from the permitted facility where the raptor is kept.

(d) A raptor possessed under a falconry permit may be used for educational display purposes. For the purposes of this section, "direct supervision" means the personal presence of a master or general falconer at all times that an apprentice falconer is engaged in the educational display of a raptor.

(1) A raptor in any given 12-month period shall not be used more frequently or for a greater amount of time for educational display purposes than for falconry purposes.

(2) Educational display of a raptor shall be performed only by a general or master falconer, or an apprentice falconer under the direct supervision of a general or master falconer.

(3) A permittee may impose a fee or charge to present an educational display, but may not charge more than is necessary to recoup the direct expenses incurred in making the presentation.

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(4) Educational display presentations shall include accurate information about falconry, wildlife conservation, and the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(5) The photographing, filming, or videotaping of raptors held under a falconry permit is lawful for educational display purposes; however, a permittee:

(A) may not receive cash or anything of value in exchange for allowing a raptor to be photographed, filmed, or videotaped; and

(B) may not use or allow the use of a raptor held under a falconry permit for purpose of entertainment media or advertisements; promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs; or as a representation of any business, company, corporation, or other organization.

(e) A permitted falconer at any time may capture a captive-bred raptor or any raptor wearing falconry equipment. If the raptor belongs to another falconer, it must be returned.

(f) In the event that an apprentice falconer's permittee-sponsor relationship is terminated, the apprentice falconer shall secure a new sponsor within 30 days of the date that the sponsor notifies the department of sponsorship termination.

(g) Raptors possessed under a valid permit may be transported to other states, subject to applicable federal, state, and local laws.

(Effective June 3, 2010)

§65.264. Permit Application Requirements.

(a) All permit applications shall be made using forms supplied by the department. An application shall contain a signed and dated statement showing that the applicant agrees that the permittee's falconry facilities, equipment, and raptors may be inspected without advance notice by the department. If the applicant is not the owner of the property where raptors are housed under this subchapter, the application shall contain a signed and dated statement showing that the owner of the property agrees that the falconry facilities, equipment, and raptors may be inspected without advance notice by the department.

(b) Educational or school programs may not be used to satisfy the experience requirements of paragraphs (1)-(4) of this subsection.

(1) An applicant for an apprentice falconry permit must be at least 12 years of age.

(A) If the applicant is under the age of 18, a parent or legal guardian must sign the application. By signing an application, a parent or

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legal guardian agrees to be legally responsible for the actions of the applicant with respect to the requirements of this subchapter. Nothing in this subparagraph shall be construed to relieve any person under the age of 18 of any legal responsibility for failure to abide by the provisions of this subchapter.

(B) An application for an apprentice permit must be accompanied by:

(i) a letter from a general falconer with at least two years' experience at that level, or a master falconer, stating that the person agrees to be the applicant's sponsor; and

(ii) an original, signed certification that the applicant is familiar with the federal falconry regulations in Title 50 of the Code of Federal Regulations and is aware that submission of false information is an offense under 18 U.S.C. 1001.

(C) The department will not issue a permit at the apprentice level until the applicant's facilities have passed an inspection conducted by a department representative or designee. All inspections shall be in the presence of the permittee or the property owner (if the facility is located on property that is not owned by the permittee).

(2) An applicant for a general falconry permit must be at least 16 years of age.

(A) If the applicant is under the age of 18, a parent or legal guardian must sign the application. By signing an application, a parent or legal guardian agrees to be legally responsible for the actions of the applicant with respect to the requirements of this subchapter.

(B) An application for a general permit must be accompanied by a signed attestation from the applicant's sponsor, who must be a general or master falconer, that the applicant has maintained (to include capture from the wild), trained, flown (which may include releasing to the wild) and hunted with raptors in the applicant's possession for at least four months in each of at least two years during which the person has been permitted to practice falconry.

(3) An applicant for a master falconry permit must have been permitted to practice falconry at the general level for a minimum of five years.

(4) An applicant for a raptor propagator permit must:

(A) be a resident of Texas;

(B) be 18 years of age or older;

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(C) have at least five years of experience in the practice of falconry; and

(D) possess a valid general or master permit.

(5) An applicant for a nonresident trapping permit must possess a license, issued by their state of residence, equivalent to a Texas falconry permit.

(c) The department will not issue an apprentice permit if the applicant has not taken a department-administered examination and scored at least 80.

(d) The requirements of subsections (b) and (c) of this section do not apply to applications for a nonresident trapping permit.

(e) A person who has allowed a falconry permit to expire is entitled to permit issuance at the level the person held at the time of permit expiration, provided not more than five years has elapsed from the date of expiration. If more than five years has elapsed since expiration, the person must take a department-administered falconry examination and record a score of at least 80.

(f) The department will not issue a permit under this subchapter to a person who has relocated to Texas while holding the valid equivalent of a permit issued under this subchapter issued by another state, territory, or tribe until the applicant's facilities have passed an inspection conducted by a department representative or designee. All inspections shall be in the presence of the permittee or the property owner (if the facility is located on property that is not owned by the permittee).

(g) The department may refuse permit issuance or renewal to any person who within five years of applying for a permit issued under the authority of this subchapter has been finally convicted of or received deferred adjudication for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R or Chapter 49;

(2) a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

(Effective June 3, 2010)

§65.265. Period of Validity. Permits will be issued with a period of validity not to exceed five years from date of issuance and shall expire on June 30 of the final year of permit validity.

(Effective June 3, 2010)

§65.266. Review of Agency Decision to Deny or Revoke Permit. An applicant or permittee for a permit under this subchapter may request a review of a decision of the department to deny issuance or delay processing of a permit.

(1) An applicant or permittee seeking review of a decision of the department with respect to denial of permit issuance under this subchapter shall first contact the department within ten business days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant or permittee of the results within ten business days of receiving a request for review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the deputy executive director for natural resources, or his or her designee;

(B) the director of the Wildlife Division; and

(C) the director of the Wildlife Diversity program within the Wildlife Division.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the Falconry and Raptor Council the number and disposition of all reviews under this section.

(Effective June 3, 2010)

§65.267. Permit Privileges and Restrictions.

(a) Apprentice falconers.

(1) An apprentice falconer may possess any member of the Order Strigiformes or Falconiformes except as provided in paragraph (3) of this subsection.

(2) An apprentice falconer may obtain a raptor by trapping, by purchase, or by transfer from another permittee.

(3) An apprentice falconer may not:

(A) possess more than one raptor at any given time;

(B) hack a raptor possessed under a permit;

(C) possess any of the following:

(i) American swallow-tailed kite (*Elanoides forficatus*);

(ii) bald eagle (*Haliaeetus leucocephalus*);

(iii) white-tailed eagle (*Haliaeetus albicilla*);

(iv) Steller's sea-eagle (*Haliaeetus pelagicus*);

(v) northern harrier (*Circus cyaneus*);

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- (vi) Swainson's hawk (*Buteo swainsoni*);
- (vii) golden eagle (*Aquila chrysaetos*);
- (viii) peregrine falcon (*Falco peregrinus*);
- (ix) flammulated owl (*Otus flammeolus*);
- (x) burrowing owl (*Athene cunicularia*); or
- (xi) short-eared owl (*Asio flammeus*); or

(D) take or possess:

- (i) an eyass;
- (ii) an imprinted raptor;
- (iii) a hybrid that has not been sterilized; or
- (iv) a raptor taken from the wild as a nestling.

(4) An apprentice falconer must secure a new sponsor within 30 calendar days in the event of sponsorship termination.

(5) An apprentice falconer may conduct abatement activities only as a subpermittee of a master falconer who holds an abatement permit.

(b) General falconers.

(1) A general falconer may possess any member of the Order Strigiformes or Falconiformes except as provided in paragraph (2) of this subsection.

(2) A general falconer may not:

(A) possess more than three raptors at any given time; or

(B) possess any of the following: golden eagle, a bald eagle, a white-tailed eagle, or a Steller's sea-eagle.

(3) A general class falconer may possess hybrid and captive-bred raptors.

(4) A general falconer may take no more than one raptor that is listed as a federal threatened species from the wild each year, provided that take is specifically authorized by both the department and the federal government.

(5) A general falconer may conduct abatement activities only as a subpermittee of a master falconer who holds an abatement permit

(c) Master falconers.

(1) A master class permittee may possess any member of the Order Strigiformes or Falconiformes except as provided in paragraph (3) of this subsection.

(2) A master class permittee may not possess more than five wild-caught raptors at any time. Captive-bred raptors may be possessed in any number; however, all captive-bred raptors must be trained and used for hunting.

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(3) A master falconer may possess up to three golden eagles, white-tailed eagles, or Steller's sea eagles, in the aggregate. To possess a raptor under this subsection, a master falconer shall submit to the department a written request to possess individuals of the listed species. The written request required by this subsection must contain description of the applicant's experience in handling large raptors, including information about the species handled and the type and duration of the activity in which the applicant has engaged. The written request required by this subsection must be accompanied by at least two letters of reference from people with experience handling and/or flying large raptors such as eagles, ferruginous hawks (*Buteo regalis*), goshawks (*Accipiter gentilis*), or great horned owls (*Bubo virginianus*). Each letter of reference must contain a concise history of the author's experience with large raptors, and must attest to the applicant's ability to care for eagles and fly them in falconry.

(4) A master falconer may take up to two golden eagles within a calendar year from a livestock depredation area declared by the United States Department of Agriculture or the governor.

(5) A master falconer may take no more than one raptor that is listed as a federal threatened species from the wild each year, provided that take is specifically authorized by both the department and the federal government.

(6) A master falconer may conduct abatement activities with a bird or birds possessed under the person's falconry permit, provided the birds are captive-bred and the permittee has obtained a federal permit for that purpose.

(7) No person other than the master falconer to whom an abatement permit has been issued may use a raptor possessed under a falconry permit to conduct abatement activities. A master falconer may receive payment, and may pay a general or apprentice falconer for providing abatement services under a federal permit for that purpose.

(d) Raptor propagator permittees.

(1) A person who holds a raptor propagator permit may use raptors possessed by the person under a falconry permit for captive breeding, however, if the raptor is used as a captive breeding bird for more than eight months in any 12-month period, the raptor must be:

- (A) permanently transferred as a propagation bird; and
- (B) be permanently banded as provided under 50 CFR

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(2) A raptor propagator may not possess or breed species of raptors listed by the federal government as endangered unless the propagator can document proof of seven years' experience caring for and handling raptors.

(e) Nonresident trapping permittees.

(1) The department will not issue a nonresident trapping permit to any person who is a resident of a state that does not allow Texas residents to trap raptors in that state.

(2) A nonresident trapper shall not trap more than one raptor per year in this state.

(f) Federal abatement permittees.

(1) The possession limits established in this section for each class of permittee do not apply to raptors possessed under a federal abatement permit.

(2) The requirements of §65.268(2) of this title (relating to Equipment and Facility Standards; Related Provisions) apply to raptors possessed under a federal abatement permit.

(3) Only a raptor held under an abatement permit may be used for abatement purposes, unless the raptor is possessed as a falconry bird by the abatement permit holder. If a raptor is possessed as a falconry bird and flown for abatement purposes, it must be:

(A) captive bred; and

(B) flown only by the person to whom the abatement permit was issued.

(Effective June 3, 2010)

§65.268. Equipment and Facility Standards; Related Provisions.

All facilities and equipment are subject to inspection by the department; however, no inspection shall be conducted unless the permittee or the property owner (if the facility is located on property that is not owned by the permittee) is personally present.

(1) Equipment. A permittee shall possess:

(A) jesses or the materials and equipment to make them;

(B) leash and swivel;

(C) bath container; and

(D) appropriate scales or balances for weighing a raptor.

(2) Facilities.

(A) General.

(i) Permit holders shall provide facilities that are appropriately sized, constructed, and maintained so as to provide a safe

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environment for raptors held under a permit issued under the authority of this subchapter. All facilities shall provide each raptor with protection from sun, wind, inclement weather, predators, and undue disturbance.

(ii) Clean water shall be available at all times except when medical or environmental circumstances require the temporary denial of water.

(iii) Veterinary care shall be available to all raptors.

(B) Permittees shall maintain facilities that meet the following standards.

(i) Indoor facility standards.

(I) If more than one raptor is being kept in a facility, the raptors shall be tethered or separated by partitions, except for raptors that are compatible with each other.

(II) Each raptor shall be kept in an area large enough to allow the raptor to fully extend its wings.

(III) A perch designed or intended for use by raptors shall be provided for each raptor kept in the facility.

(IV) There shall be at least one window, protected on the inside by vertical bars spaced narrower than the width of the raptor's body if the bird is not to be tethered, and a secure door.

(V) The floor of the facility shall be kept clean.

(ii) Outdoor facility (weathering area) standards.

(I) Weathering areas shall be fenced and covered with netting or roofed to protect the raptors from disturbance or attack.

(II) A weathering area must be provided with a minimum of 32 square feet and each raptor must have an area large enough to fly, if it is untethered, or, if tethered, to fully extend its wings or bate (attempt to fly while tethered) without damaging its feathers or contacting other raptors.

(III) The floor of the facility shall be well drained.

(iii) Raptors may be housed in a personal residence without modifications to windows or other openings in the residence; provided:

(I) a suitable perch is provided for each raptor; and

(II) each raptor is tethered when not being moved into or out of the location in which they are kept.

(C) Only one facility is required if it meets the requirements for both indoor and outdoor facilities.

(3) Alternative or Temporary Facilities. The provisions of this paragraph are intended to allow for the temporary relocation of falconry

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raptors due to special circumstances or conditions that prevent the provision of adequate housing and/or care by the falconer to whom the raptors are registered. Nothing in this paragraph shall be construed as to allow the de facto permanent possession of any raptor and the department shall determine on a case-by-case basis if the provisions of this paragraph are being used for that purpose.

(A) A permittee may house a raptor in a temporary facility for no more than 120 consecutive calendar days, provided the raptor is provided with a perch and is protected from predators, domestic animals, extreme temperatures, wind, and injurious disturbance.

(B) A person with a valid falconry permit may care for a raptor or raptors held under another person's falconry permit for up to 120 consecutive calendar days, provided the person possesses:

(i) a signed and dated statement authorizing the temporary possession. The statement must specify the time period for which the person will keep each raptor and the activities the person is allowed to engage in with each raptor (to include flying and hunting, provided the permittee in temporary possession is authorized to do so under the terms of their falconry permit);

(ii) a copy of a valid FWS form 3-186A for each bird in temporary possession. A raptor held under the provisions of this subparagraph does not count against the possession limits established under the provisions of §65.267 of this title (relating to Permit Privileges and Restrictions) for the person holding the raptor;

(iii) the department may authorize temporary possession in excess of 120 days when warranted by extenuating circumstances such as illness, military service, natural disasters, or a family emergency. A person seeking an extension under this subparagraph shall submit a written request to the department, accompanied by a signed affidavit stating the nature of the extenuating circumstance; and

(iv) upon the 30th consecutive day that a raptor has been in temporary possession under the provisions of this paragraph, the falconer who placed the raptor in temporary possession shall notify the department. Such notification shall be made within ten days from the date that the 30-day period has elapsed.

(C) A person who is not a permitted falconer may provide care for a permittee's raptor or raptors for no more than 45 consecutive days, provided:

(i) the raptor or raptors remain at the permittee's facility;

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(ii) the raptor or raptors are not flown for any reason; and
(iii) the department may authorize temporary possession in excess of 45 days when warranted by extenuating circumstances such as illness, military service, natural disasters, or a family emergency. A person seeking an extension under this subparagraph shall submit a written request to the department, accompanied by a signed affidavit stating the nature of the extenuating circumstance.

(4) Transportation and Possession Away from a Permitted Facility. At all times that a raptor possessed under this subchapter is not in a permitted facility, the permittee responsible for the raptor shall provide:

(A) a perch designed or intended for use by raptors; and
(B) protection from extreme temperatures, wind, and injurious disturbance.

(Effective June 3, 2010)

§65.269. Marking, Banding, and Telemetry.

(a) Markers and bands.

(1) No person may possess an unmarked goshawk, Harris's hawk, peregrine falcon, or gyrfalcon under a permit issued pursuant to this subchapter unless the person has notified the department within ten days of acquisition. Upon notification, the department shall issue a Type 1 leg band, which must be attached to the raptor immediately upon receipt.

(2) A person who takes a goshawk, Harris's hawk, peregrine falcon, or gyrfalcon from the wild or acquires one from a rehabilitator must band the raptor with a Type 1 leg band. Within ten days from the date of take, the person shall report the take of the bird by entering the required information (including the band number) in the electronic database at <http://permits.fws.gov/186A>. Upon request, the department will supply a band in advance of capture.

(3) A person who possesses a raptor bred in captivity must band the bird with a Type 2 leg band. If the band required by this subsection is removed or lost, it must be reported within ten days of removal or loss by contacting the department. The department shall issue a replacement band upon notification. The person shall band the bird with the replacement band immediately upon receipt of the band and immediately upon rebanding shall submit all required information electronically at <http://permits.fws.gov/186A>.

(4) If a band is removed or lost from a raptor that is not captive-bred, the person in whose name the raptor is possessed must report the removal or loss within five days and request a replacement band from the department. The person shall band the bird with the replacement band

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immediately upon receipt and shall submit the required information electronically immediately upon rebanding at <http://permits.fws.gov/186A>.

(5) The department may exempt a permittee from the banding requirements of this section for a raptor upon submission of documentation proving that banding has caused health or injury problems for the raptor. In such cases, the department will provide the exemption in writing, and the permittee must:

(A) maintain the exemption notice at the permitted facility where the raptor is kept; and

(B) possess the exemption notice on their person when in possession of the raptor away from the permitted facility where the raptor is kept.

(6) A wild-caught raptor may not be banded with a Type 2 band.

(7) It is unlawful for any person to alter, counterfeit, or deface a marker, except that a permit holder may remove the rear tab on markers and smooth an imperfect surface, provided the integrity of the marker and numbering are not affected.

(b) Telemetry. No person authorized to fly a hybrid raptor may free-fly the raptor unless at least two radio transmitters are attached to the raptor.

(Effective June 3, 2010)

§65.270. Notification, Reporting, and Recordkeeping Requirements.

(a) A general or master falconer acting as a sponsor for an apprentice falconer shall notify the department in writing within ten days of terminating a sponsor-apprentice relationship.

(b) A permittee shall maintain a copy of all notifications required under this section for a period of five years. Notification under this subsection shall be made via the electronic database at <http://permits.fws.gov/186A>. Except as specifically provided by paragraph (6) of this subsection, notification shall be within ten days of any event condition listed in this subsection. A permittee is required to provide notification:

- (1) upon acquisition of a raptor;
- (2) upon take of a raptor from the wild;
- (3) when a raptor is transferred by the permittee to another permittee;
- (4) when a raptor is rebanded;

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(5) when a raptor in the permittee's possession is stolen (a permittee must report a suspected stolen raptor to the appropriate local police jurisdiction);

(6) at any time that a raptor in the possession of the permittee:
(A) has been lost in the wild; and
(B) 30 consecutive days have elapsed and the raptor has not been recovered by the permittee; and

(7) when a raptor in the possession of a permittee dies.

(c) A falconer who captures a bird that belongs to another falconer must report the capture to the department within five days of capture. The department will determine the disposition of the raptor in the event that the owner of the raptor cannot be determined or located.

(d) A person who holds a permit issued under this subchapter shall:
(1) upon a change of address within Texas, notify the department within 30 days of the change of address; and

(2) within 30 days of relocation outside of Texas, notify both the department and the entity where the permittee has relocated that is legally responsible for the regulation of the possession of raptors for falconry purposes.

(e) A person who holds a permit issued under this subchapter shall notify the department within five business days of moving a facility regulated under this subchapter.

(f) A person who relocates to Texas and holds the valid equivalent of a permit issued under this subchapter issued by another state, territory, or tribe may retain raptors the person lawfully possesses; however, the person shall submit an application for the appropriate Texas permit within 30 days of relocation to this state. The department will not issue a permit until the applicant's facilities have passed an inspection conducted by a department representative or designee. All inspections shall be in the presence of the permittee or the property owner (if the facility is located on property that is not owned by the permittee).

(Effective June 3, 2010)

§65.271. Trapping.

(a) No person may take more than two raptors from the wild between July 1 of one year and June 30 of the immediately following year.

(b) No person may remove an egg from a raptor nest in the wild.

(c) Only a general or master falconer may take an eyass. No person shall take more than two eyasses within a calendar year. No person may remove an eyass from a nest if it is the only eyass in the nest.

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(d) If a young raptor that is incapable of independent flight is displaced from the nest or nest area as a result of trapping activities, the falconer responsible for the displacement shall place the raptor back in the nest or in an area near the nest where the raptor is not vulnerable to terrestrial predators.

(e) A permittee may obtain a raptor from the wild with the assistance of another person.

(1) If the permittee captures a raptor from the wild or is present when a raptor is captured from the wild on behalf of the permittee, the permittee shall file the report required by §65.270 of this title (relating to Notification, Reporting, and Recordkeeping Requirements).

(2) If the permittee is not present when a raptor is captured from the wild on behalf of the permittee:

(A) the person who captures the raptor from the wild must:

(i) be a general or master falconer; and

(ii) must file the report required by §65.270 of this title and then transfer the bird to the permittee as provided by §65.272 of this title (relating to Transfer, Sale, and Donation); and

(B) the provisions of subsection (a) of this section apply to the person who trapped the raptor, but not to the person on whose behalf the raptor was trapped.

(3) A general or master falconer may capture a raptor from the wild on behalf of a permittee, provided the person who captures the raptor possesses a physician's statement. The person on whose behalf the bird was trapped is required to file the report required by §65.270 of this title and the requirements of subsection (a) of this section apply to that person.

(f) Trapped birds that are not intended to be or cannot be kept for falconry purposes shall be released to the wild immediately upon discovery, unless the bird is injured in the process of trapping. A raptor injured as a result of trapping activity must be:

(1) transported to a permitted wildlife rehabilitator, veterinarian, or government wildlife agency employee, in which case the person who trapped the bird is liable for all costs that may be imposed for caring for and/or rehabilitating and releasing the raptor; or

(2) reported as a wild-caught raptor and made part of the permittee's legal possession limit under the permittee's falconry permit.

(g) Nonresidents in possession of a valid Nonresident Trapping Permit may take raptors from the wild according to the terms of the permit.

(h) An apprentice falconer may not trap:

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- (1) an eyass; or
- (2) a raptor older than one year of age.

(i) Raptors may be taken year round. A marked raptor may be retrapped at any time.

(j) In Aransas, Brewster, Brooks, Calhoun, Cameron, Culberson, Duval, Ector, El Paso, Hidalgo, Hudspeth, Jackson, Jeff Davis, Kenedy, Kinney, Kleberg, Matagorda, Maverick, Midland, Nueces, Pecos, Presidio, Reeves, Refugio, San Patricio, Starr, Terrell, Val Verde, Victoria, Webb, Willacy, or Zapata counties:

(1) an apprentice falconer must be accompanied by a master or general falconer during all trapping activities; and

(2) all persons must immediately cease trapping activities, including the retrieval of all traps, upon observing a northern aplomado falcon (*Falco femoralis*) in the vicinity of the trapping effort.

(k) The department may issue permits authorizing the trapping of Arctic peregrine falcons (*Falco peregrinus tundrius*). Permits shall be issued by a fair and impartial method to permitted falconers only.

(l) A master falconer may take a golden eagle (adult or nestling) under the provisions of this subchapter in a livestock depredation area declared by the federal government or the governor. No person shall take an adult golden eagle from a depredation area unless the department has determined that the eagle is preying on livestock and the notification requirements of §65.270 of this title have been met.

(m) No eggs may be taken from raptor nests.

(n) No raptor may be taken when over one year old or in adult plumage.

(o) Any raptor other than an endangered species taken under a federal depredation (including a special purpose depredation) permit may be used for falconry by a general or master falconer. Endangered species taken under a depredation permit shall not be released to the wild without prior written department approval of the release site.

(Effective June 3, 2010)

§65.272. Transfer, Sale, and Donation.

(a) No person shall purchase, sell, trade for anything of value, barter or offer to purchase, sell, trade for anything of value, or barter a wild raptor.

(b) Except as provided for in §65.271(e)(3) of this title (relating to Trapping), a raptor trapped from the wild shall count against the annual trapping limit of the person who trapped the bird, even if the raptor is transferred to another permittee.

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(c) No person may transfer more than one wild-caught raptor to an out-of-state resident in any 12-month period.

(d) A falconer may buy raptors from any legal source and may buy, sell, purchase, barter, and offer to buy sell, purchase, or barter captive-bred raptors to another falconer in this state and to persons outside the state who are authorized under federal and state law to purchase raptors. A captive-bred raptor that is bought, sold, or bartered must be banded with a Type 2 band.

(e) A falconer may transfer a raptor to another falconer, provided the possession limits established by this subchapter are not exceeded.

(f) A falconer may transfer a wild-caught raptor to:

(1) the holder of a raptor propagation permit, provided:

(A) the raptor is a sharp-shinned hawk, Cooper's hawk, merlin, or American kestrel and has been used in falconry for a minimum of one year; or

(B) the raptor is any species of raptor other than the species listed in subparagraph (A) of this paragraph and has been used in falconry for a minimum of two years;

(2) a person other than a raptor propagator who is permitted to possess raptors, provided a licensed veterinarian or permitted wildlife rehabilitator has certified that the raptor is no longer capable of being used for falconry. A permittee who transfers a raptor under the provisions of this paragraph shall furnish the certification and a copy of the permittee's federal form 3-186A to the federal permits office responsible for administering the permit type held by the person to whom the raptor is transferred.

(g) A permitted rehabilitator may transfer a raptor to a general or master falconer for use in falconry, provided the transfer is reported under the provisions of §65.270 of this title (relating to Notification, Reporting, and Recordkeeping Requirements). A raptor acquired from a rehabilitator counts against the possession limits established under the provisions of §65.267 of this title (relating to Permit Privileges and Restrictions) for the person holding the raptor.

(h) A surviving spouse, executor, administrator, or other legal representative of a deceased falconry permittee may transfer any bird held by the permittee to another authorized permittee within 90 days of the death of the falconry permittee. After 90 days, disposition of a bird held under the permit is at the discretion of the department.

(Effective June 3, 2010)

§65.273. Release to the Wild.

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(a) No person may release a raptor to the wild if:

- (1) the raptor is a hybrid; or
- (2) the raptor is a species or subspecies that is not indigenous to

Texas.

(b) No person may permanently release a captive-bred indigenous raptor to the wild unless authorized to do so by the department in writing. If the department authorizes such release, the permittee shall:

(1) hack the bird to the wild at an appropriate time of year and an appropriate location;

(2) remove any falconry band and/or telemetry devices from the bird; and

(3) report release of the bird as provided in §65.270 of this title (relating to Notification, Reporting, and Recordkeeping Requirements).

(c) An indigenous raptor that was acquired by trapping from the wild may be released to the wild only at a time of year and at a location that is consistent with and facilitates the raptor's ability to survive in the wild. All bands and telemetry must be removed and the permittee is required to provide notification as set forth in §65.270 of this title.

(Effective June 3, 2010)

§65.274. Miscellaneous Provisions.

(a) Hacking. A hacked raptor counts against the possession limits established by this subchapter.

(b) Imping.

(1) For imping purposes, a falconer may possess the flight feathers of those species of raptors the falconer is authorized to possess and may obtain such feathers from or give such feathers to another falconer, a licensed wildlife rehabilitator, or a licensed raptor propagator; however, no person may buy, sell, or barter raptor feathers. Feathers from any raptor other than a golden eagle may be donated to any person or institution authorized by state or federal law to accept or possess them.

(2) A person who possesses a golden eagle must collect all primary and secondary flight feathers and retrices (tail feathers) that are molted or otherwise shed. Feathers that are not retained for imping purposes must be mailed to the National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022.

(3) If a permit issued under this subchapter is revoked by the department or expires without renewal, the person whose permit is revoked or expired must destroy all feathers in possession or donate them to a person

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or institution authorized to obtain and possess them. Golden eagle feathers may not be destroyed and must be mailed to the National Eagle Repository.

(4) Feathers that are molted and feathers from raptors that die in captivity may be retained and exchanged by permit holders only for imping purposes.

(c) Raptor rehabilitation. A falconer may assist a permitted migratory bird rehabilitator in conditioning raptors for release to the wild and may keep such a raptor in a falconry facility. Such birds do not count against the falconer's possession limit under §65.267 of this title (relating to Permit Privileges and Restrictions); however, the facility standards set forth in §65.268 of this title (relating to Equipment and Facility Standards; Related Provisions) apply to rehabilitation birds temporarily housed in a falconry facility, provided the falconer:

(1) is listed as a subpermittee on the rehabilitator's permit; and

(2) possesses a letter or form, signed by the rehabilitator, certifying that the raptor is being temporarily possessed for rehabilitation purposes. The form shall include the rehabilitator's name, physical address, telephone number, and permit number.

(3) Within 180 days, a raptor possessed by a permittee under the provisions of this subsection shall be:

(A) released to the wild;

(B) transferred to the permittee as a raptor under the permittee's falconry permit; or

(C) returned to the rehabilitator from whom the raptor was obtained, unless the permittee has been specifically authorized in writing by the department to retain the raptor for longer than 180 days.

(4) A raptor that cannot be permanently released to the wild shall be returned to the rehabilitator from whom the raptor was obtained.

(d) Disposition of raptor mortalities. If a raptor possessed under a permit issued under this subchapter dies, the raptor shall be disposed of as provided in this subsection. A raptor may be necropsied to determine the cause of death, but must be buried or destroyed within ten days of necropsy, except as provided by paragraph (2) of this subsection.

(1) The body and/or feathers of a dead raptor may be donated to any person or institution authorized to obtain or possess the raptor or its feathers.

(2) The body and/or feathers of a dead raptor may be preserved, mounted and retained by the permittee, and may be used in educational programs. If the bird was banded, the band must remain on the raptor.

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(3) If the body or feathers of a dead raptor are not donated as provided by §65.272 of this title (relating to Transfer, Sale, and Donation) the flight feathers or taxidermic body mount of the raptor may be possessed for as long as a valid falconry permit is maintained by the falconer who possessed the raptor; however, the falconer must maintain the paperwork documenting the acquisition of the bird.

(4) The body of a golden eagle (including all feathers not retained for imping purposes, talons, and other parts) that dies while possessed under a falconry permit shall be sent to the National Eagle Repository.

(Effective June 3, 2010)

§65.275. Exceptions. The provisions of Subchapter I of this chapter (relating to Depredation Permits) do not apply to raptors possessed or used under a federal abatement permit.

(Effective June 3, 2010)

§65.276. Open Seasons and Bag Limits; Hunting.

(a) There shall be an open season during which game animals and game birds except for migratory birds may be taken by means of falconry.

(1) Open season: September 1-August 31.

(2) Daily bag and possession limits:

(A) game animals: as specified for individual counties in Subchapter A of this chapter (relating to Statewide Hunting and Fishing Proclamation);

(B) game birds other than migratory birds: one per day, either sex, per raptor, and the possession limit is two, either sex, per raptor; and

(C) migratory game birds: as provided by Subchapter N of this chapter (relating to Migratory Game Bird Proclamation).

(b) A falconer who flies a raptor that subsequently and without the intent of the falconer kills an animal or bird outside of the open season for the animal or bird, or an animal or bird that cannot be possessed without violating a possession limit, may allow the raptor to feed upon the dead animal or bird, but may not take possession of the animal or bird.

(c) The take of any animal or bird that is listed by the federal government as threatened or endangered must be reported to the U.S. Fish and Wildlife Service Ecological Services Field Office for the location in which the take occurred.

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§65.277. Violations and Penalties. A violation of this subchapter, 50 CFR §29.21, or a provision of a permit issued under this subchapter is an offense punishable by the penalties prescribed by Parks and Wildlife Code, §49.017.

(Effective June 3, 2010)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 21, 2010.