

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ECOLOGICAL AND WATER RESOURCES

IN THE MATTER OF THE PROPOSED AMENDMENT OF

RULES RELATING TO

FALCONRY

STATEMENT OF NEED AND REASONABLENESS

February 22, 2013

Minnesota Department of Natural Resources

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Relating to Falconry, *Minnesota Rules*, chapter 6238

INTRODUCTION

The Minnesota Department of Natural Resources (DNR) protects the state's natural heritage by conserving the diversity of natural lands, waters, fish, and wildlife that provide the foundation for Minnesota's recreational and natural resource-based economy. To that end, the commissioner of the DNR has the statutory authority under Minnesota Statutes, sections 97A.401 and 97A.418, to issue permits for falconry and raptor propagation. "Falconry" means training raptors for pursuit of wild game and hunting wild game with raptors. Falconry includes the taking (capture) of raptors from the wild to use in the sport and caring for, training, and transporting raptors held for falconry. The term "raptor propagation" refers to the practice of breeding raptors and then raising their hatched young. The term "raptor" generally refers to birds of prey such as hawks, falcons, or eagles, and in this part is defined as a bird of the family Falconidae, or the great horned owl (*Bubo virginianus*), or of the family Accipitridae, except for the bald eagle (*Haliaeetus leucocephalus*).

Previously Falconry Permits were joint permits between the DNR and the U.S. Fish and Wildlife Service (USFWS); however, as of October 8, 2008, the USFWS revised the federal Falconry Permit requirements (Code of Federal Regulations, title 50, sections 21.29). They will no longer issue a federal permit to practice falconry (all other federal permits are still required such as for propagation or abatement); instead, the USFWS mandated that in order for each state to continue issuing permits under a falconry program, each state must adopt language that at a minimum conforms to the federal falconry regulations, and the state's regulations must then be approved by the USFWS by January 2014.

The proposed state regulations are supplemental to the federal regulations and clarify areas where the federal regulations give states discretion or where Minnesota regulations are more restrictive than federal regulations. The proposed regulations also establish Minnesota-specific provisions necessary for program administration. Because these clarifications required extensive alterations to the current regulations found under Minnesota Rules, parts 6238.0100 to 6238.1100, the proposed regulations will repeal the current parts and replace them with Minnesota Rules, parts 6238.1200 to 6238.1750. To the extent possible, many of the current Minnesota standards were maintained, but the proposed regulations refer frequently to applicable federal regulations not contained in the Minnesota regulations.

Full details on the need for and reasonableness of each proposed rule, including the reason and need for any differences between state and federal regulations and between current and proposed state regulations, are covered in the rule by rule analysis starting on page 24. The following is a brief description of the types of changes in the proposed regulations and a partial list of the specific provisions affected under each type.

- Regulations not explicitly detailed in the proposed regulations but which refer to federal regulations. Examples include: facilities and equipment standards, regulations on auxiliary permits for falconers and their raptors (eagle, rehabilitation, and education), wild raptor

take restrictions, temporary housing and facilities standards, and feather/raptor corpse disposal regulations.

- Federal regulations that needed state-specific clarification. Examples include: the need for part-year residents to obtain a permit, Eagle Permits must be issued by the state in conjunction with the Falconry Permit, permission for falconers to assist rehabilitators, allowances for propagator take, and permission to hack raptors.
- Federal regulations that became more restrictive than the current state regulations. Examples include: Apprentice Falconers who are under 18 years old will need parental signatures; falconers who fly hybrid raptors will need two transmitters; and requirements for permittees to sign statements in the application regarding their understanding of the regulations, care of the birds, and maintenance of their facilities.
- Federal regulations that are now less restrictive than the current state regulations and are incorporated into the proposed regulations. Examples include: time extensions for submitting paperwork, reducing the age of falconers from 14 to 12 by creating a Junior Apprentice class, increasing the number of birds a Master Falconer may possess from 3 to 5 (wild caught possession will remain 3), basing a falconer's educational requirements on falconry seasons as opposed to calendar years, and the use of falconry raptors in propagation without the need to transfer between permits.
- Federal regulations that are now less restrictive than the current state regulations but have not been incorporated into the proposed regulations. Examples include: allowances for falconers to possess more raptors at a given time, allowances for falconers to possess additional raptor species, reduction in age requirements for General Falconers, and an expansion of take permissions to include eggs for propagators (a complete summary is included under Question #7 on page: 15).
- In addition to the changes resulting from the revised federal regulations, the rules were also changed to:
 - conform to current syntax and format standards for rulemaking;
 - conform to current invasive species regulations (potential issues relating to non-native and hybrid raptors);
 - respond to input from the Minnesota falconry community (extended take season for raptors, allowances to use new trapping methods for raptor take, and possession restrictions for Apprentices);
 - improve the standards for raptor propagation (creation of two propagator classes); and
 - include allowances to conduct abatement (removal of unwanted animals) using falconry raptors (abatement using falconry raptors is not currently addressed in state regulations).

The proposed rules were developed after obtaining input from Minnesota falconers, the Minnesota birding community (Audubon Minnesota, The Raptor Center, and Hawk's Ridge Bird Observatory), knowledgeable DNR staff from several divisions (Ecological and Water Resources, Enforcement, and Fish and Wildlife), and USFWS. As the rules primarily affect the falconry community, multiple meetings were held with individual falconers prior to creating an initial draft of the proposed regulations. The initial draft was presented to the falconry community at an input meeting, and a questionnaire was presented to the falconers (as well as the other interested parties previously listed) to obtain feedback on the initial draft. The input from the questionnaire, phone conversations, and meetings was then reviewed and incorporated into a second draft that was

submitted to the general public with the Request for Comments on October 8, 2012 (State Register, Vol. 37, pp. 524-525).

The second draft was positively received by the falconers and general public with only a few minor comments submitted by falconers/raptor propagators during the Request for Comments period. During the initial input meetings, Minnesota birders and DNR experts had reservations about changes in federal regulations that could increase wild bird take or could impact goshawk nesting efforts in Minnesota, so those concerns were addressed in all drafts of the proposed rule changes. Consequently, representatives at Audubon Minnesota indicated that the Minnesota birding community was unlikely to have concerns over either draft of the proposed regulations because impacts to wild bird populations either were reduced or would remain about the same as under the current state regulations. Additionally, both drafts of the proposed regulations were submitted to George Allen, Chief of the Branch of Permits and Regulations in the Division of Migratory Bird Management with the USFWS, who stated that the proposed regulations did not conflict with the federal falconry or raptor propagation regulations and would be approved once adopted by the state.

The final draft of the proposed regulations reflect changes suggested by the Revisor's office for form and syntax (such as references to commissioner discretion were removed and replaced with more specific standards), as well as, the repeal of the former rule (parts 6238.0100 to 6238.1100) and replacement with the proposed, renumbered regulations (parts 6238.1200 to 6238.1750). There were also several changes incorporated into the final draft that resulted from comments received during the Request for Comments period (preserving great horned owls as the only owl allowed for possession in falconry and trespass issues on county land) and errors or issues noted and resolved while writing the SONAR.

Additionally, the process for permitting abatement activities changed in the final draft due to recently announced revisions in federal Abatement Permit provisions. Currently, federal Abatement Permits are issued as Special Purpose Permits under Code of Federal Regulations, title 50, section 21.27. The policies governing the federal Abatement Permits are covered under an August 22, 2007 Migratory Bird Permit Memorandum and a factsheet provided with the application. However, the USFWS is in the initial phases of revising the abatement regulations, and they will potentially be regulated under Code of Federal Regulations, title 50, section 21.33. Because the final parameters of the proposed federal abatement regulations have not been set and because the current federal abatement policies are based only on a memo and factsheet, clear state abatement provisions have been added to the proposed rule that will work with the current and proposed federal abatement regulations.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Heidi Cyr at Department of Natural Resources by *phone* 651-259-5107, *fax* 651-296-1811, or *email* heidi.cyr@state.mn.us. TTY users may call the Department at 651-296-5484 or 1-800-657-3929.

STATUTORY AUTHORITY

All sources of statutory authority were adopted and effective before January 1, 1996 and have not been revised by the Legislature since then, and so Minnesota Statutes, section 14.125, does not apply.

The Department's statutory authority to adopt the rules for falconry and raptor propagation is stated in Minnesota Statutes, sections 97A.401, 97B.105, and 97A.418, which provide:

97A.401 SPECIAL PERMITS.

Subdivision 1. Commissioner's authority. The commissioner may issue special permits for the activities in this section. A special permit may be issued in the form of a general permit to a governmental subdivision or to the general public to conduct one or more activities under subdivisions 2 to 7.

Subd. 3. Taking, possessing, and transporting wild animals for certain purposes. (a) Except as provided in paragraph (b), special permits may be issued without a fee to take, possess, and transport wild animals as pets and for scientific, educational, rehabilitative, wildlife disease prevention and control, and exhibition purposes. The commissioner shall prescribe the conditions for taking, possessing, transporting, and disposing of the wild animals.

Subd. 7. Raptors. The commissioner shall prescribe conditions and may issue permits for persons to breed, propagate, and sell raptors.

97A.418 PERMIT RULES.

Wherever the game and fish laws specifically provide for the issuance of a permit by the commissioner, the commissioner may do the following in accordance with criteria and procedures established in rules adopted by the commissioner:

- (1) issue a permit with reasonable conditions; and*
- (2) deny, modify, suspend, or revoke a permit for cause, including violation of the game and fish laws or rules adopted thereunder.*

97B.105 HUNTING BY FALCONRY.

A person may take a protected wild animal by falconry under rules prescribed by the commissioner.

Other statutes applicable to the proposed rule changes are Minnesota Statutes, sections 84D.06, 84D.08, 97A.025, and 97A.045, which provide:

84D.06 UNLISTED NONNATIVE SPECIES.

Subdivision 1. Process.

A person may not introduce an unlisted nonnative aquatic plant or wild animal species unless:

- (1) the person has notified the commissioner in a manner and form prescribed by the commissioner;*
- (2) the commissioner has made the classification determination required in subdivision 2 and designated the species as appropriate; and*
- (3) the introduction is allowed under the applicable provisions of this chapter.*

84D.08 ESCAPE OF NONNATIVE AND INVASIVE SPECIES.

(a) A person that allows or causes the introduction of an animal that is a prohibited invasive, regulated invasive, or unlisted nonnative species shall, within 24 hours after learning of the introduction, notify the commissioner, a conservation officer, or another person designated by the commissioner. The person shall make every reasonable attempt to recapture or destroy the introduced animal. If the animal is a prohibited invasive species, the person is liable for the actual

costs incurred by the department in capturing or controlling, or attempting to capture or control, the animal and its progeny. If the animal is a regulated invasive species, the person is liable for these costs if the introduction was in violation of the person's permit issued under section 84D.11.

97A.025 OWNERSHIP OF WILD ANIMALS.

The ownership of wild animals of the state is in the state, in its sovereign capacity for the benefit of all the people of the state. A person may not acquire a property right in wild animals, or destroy them, unless authorized under the game and fish laws, sections 84.091 to 84.15, or sections 17.47 to 17.498.

97A.045 COMMISSIONER, GENERAL POWERS AND DUTIES.

Subd. 2. Power to protect wild animals. (a) The commissioner may protect a species of wild animal in addition to the protection provided by the game and fish laws, by further limiting or closing seasons or areas of the state, or by reducing limits in areas of the state, if the commissioner determines the action is necessary to prevent unnecessary depletion or extinction, or to promote the propagation and reproduction of the animal.

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

“1. a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

Those affected directly by the proposed rules are falconers and raptor propagators. Others that may be affected by the proposed rules may include bird enthusiasts within the general public.

The following is a list of direct and indirect costs that falconers and raptor propagators may incur under the proposed rules:

- The direct cost of purchasing two transmitters when flying and hunting with non-native raptor species and hybrid raptors. This is a mandatory requirement under federal regulations for hybrid raptors. Most falconers already use transmitters when flying and hunting their raptors due to the effort required to train the birds and the expense of purchasing propagated raptors.
- The direct cost of building a mews and weathering area compliant to mandatory federal standards. This requirement is already part of current state regulations.
- The direct cost of purchasing equipment compliant to mandatory federal standards. This requirement is already part of current state regulations.
- The indirect cost associated with the time needed to submit paperwork. This requirement is already part of current state regulations and is a mandatory requirement under federal regulations; however, much of the paperwork can now be submitted electronically, so this time requirement may actually be reduced.
- The indirect cost associated with the time needed to submit to facilities inspections. This requirement is already part of current state regulations and is a mandatory requirement under federal regulations.

- The impact of paper work and inspection requirements in larger raptor propagation operations may be more significant due to volume of birds that they may house; however, there currently are no facilities in Minnesota that fall into that category.

Indirectly, the loss of raptors from the state's wild populations may be a cost to bird enthusiasts in the general public; however, wild raptor take (capture) is already a part of current falconry regulations, and is not expected to increase under the proposed regulations. Furthermore, restrictions on wild raptor take in the proposed regulations will prevent declines in state wild raptor populations.

Falconers and raptor propagators benefit from the proposed rules both directly and indirectly. Major benefits to falconers include:

- allowances for falconers in the Master Class to possess more raptors at a given time (previously 3 raptors, proposed 5 raptors);
- the ability to progress more quickly through the classes of falconry (previously full 12 months per year of experience, proposed "seasons" of experience);
- the ability to become a falconer at an earlier age (previously 14 years old, proposed 12 years old);
- time extension for submitting required paperwork (previously 5 days, proposed 10 days);
- the ability to use their own falconry birds for their own raptor Propagation Permit without having to submit paperwork to do so;
- the ability to use their falconry birds in abatement activities;
- the ability to use their falconry birds for educational purposes in accordance with federal regulations;
- allowances to transfer rehabilitation raptors onto a Falconry Permit and for falconers to act as rehabilitators in accordance with federal and state regulations;
- an extended take season for raptors;
- the ability to use new trapping methods for raptor take;
- allowances to keep raptors within a place of residence;
- allowances to keep compatible raptors housed together; and
- once the proposed rules are in place, falconers will no longer need to pay the \$100.00 fee to the USFWS for their federal Falconry Permit because it will no longer be a joint permit with the USFWS; however, the DNR may seek statutory authority to collect fees for state Falconry Permits.

Bird enthusiasts in the general public will benefit because there are added safeties written into the regulations to prevent wild raptor population depletion from take under Falconry, Non-resident Take, and Propagation Permits.

State taxpayers and outdoor enthusiasts that value native plant and animal communities will benefit from the proposed language which restricts the release of potentially invasive non-native and hybrid raptors. Falconers currently possess several varieties of non-native species, such as the

Russian or European Goshawk, European Sparrow Hawk, Peruvian Falcon, and Gyr/Peregrine Falcon hybrid. Restricting the release of these and other non-native species and hybrids would prevent these birds from establishing breeding populations, which would compete for resources with indigenous raptors. Also, they may interbreed with indigenous raptors, particularly in the case of goshawks. Falconers like to hunt with the non-native Russian or European Goshawks because they are more docile than the indigenous Northern Goshawks, but interbreeding between the two species in the wild could have deleterious effects on the native goshawk population. Additionally, hybrids, whether produced in the wild or in captivity are generally sterile, but may pair with a non-hybrid mate, which effectively eliminates the breeding potential of that otherwise healthy individual. The unproductive pair would take resources, nesting space, and food that a productive pair could use. Once an invasive species is established, it is generally a difficult and costly process to try removing or at least managing its population to limit impacts on indigenous flora and fauna.

“2. the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The proposed regulations do not add any new duties or responsibilities to the DNR. There should be a negligible impact on the agency in terms of workload and cost upon implementation of the proposed rules:

- Most of the paperwork and inspection requirements are already part of the program in the current regulations.
- Forms, permits, applications, the exam, the website, etc. may need a one-time update in order to ensure that all documents contain current regulations.
- The number of Nonresident Take Permits may increase under the proposed regulations due to the definition change for when a Nonresident Take Permit is required. Currently only the actual take of a wild Minnesota raptor by a nonresident requires a Nonresident Take Permit, but after the rule change, transfer of a wild Minnesota raptor would require a Nonresident Take Permit as well. However, the time required for the additional Nonresident Take Permits will be offset by a reduction in time needed to jointly coordinate with the USFWS for all of the resident Falconry Permits (a much larger percentage of permits), the benefits gained from electronic reporting of raptor transfers, and the use of the federal electronic database (both result in a reduction in time needed to process paperwork).
- Eagle Permits are already issued under current regulations; however, the new federal regulations have more stringent standards for permit issuance, which have been adopted under the revised regulations.
- Abatement Permits will be a new permit issued under these regulations; however, there currently are only a few Minnesota falconers who have federal Abatement Permits. Also, like Eagle Permits and most Propagation Permits, the proposed Abatement Permit can be issued in tandem with the Falconry Permit, so most administrative activities required under the Falconry Permit can be conducted simultaneously for the Abatement Permit.

There should be a reduction in administrative costs to the USFWS upon implementation of the proposed rules. They will no longer incur the expense of administering a falconry program or writing joint permits (the USFWS already defers facilities inspections to the State). Additionally,

they will require all raptor status changes to be submitted electronically into their database. However, upon implementation of the proposed rules, the USFWS, of their own volition, will no longer receive the \$100.00 Falconry Permit fee (paid every three years upon renewal).

There are no significant positive or negative direct impacts anticipated for state revenues as a result of these rules since the DNR already enforces and monitors a falconry and raptor propagation program. Falconry, Nonresident Take, and Propagation Permits currently have no associated state fee and will continue to have no fee under the proposed regulations because legislative authority is required to enact a fee. The DNR may, in the future, seek authority to collect fees for falconry and associated permits.

“3. a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The DNR has determined that there are no less costly methods for achieving the purpose of part 6238 for the state:

- The proposed state regulations will adhere to federal requirements for permit issuance and compliance, raptor tracking, and facilities inspection for falconry and raptor propagation. Therefore, the labor costs and other expenses for conducting these activities must, at a minimum, be incurred if falconry and raptor propagation is to continue in the state (all of these activities occur under the current regulations). The Workload and paperwork will be minimized for the Abatement Permits by limiting the permittees to being permitted Minnesota falconers and to using only their falconry raptors. To save time and resources, the required paperwork is sent or submitted electronically between the permittee and falconry coordinator when possible. Additionally, most propagators are also falconers (Abatement Permittees must be falconers), so both facilities may be inspected during a single site visit to save time for both the permittee and regulator.
- To minimize paperwork, no Minnesota permit is required for nonresidents with a Falconry Permit from their state, tribe, or territory to practice falconry or transfer a bird in Minnesota, unless the bird transferred is a wild Minnesota raptor or a wild Minnesota raptor will be taken. In that case, they only need a Nonresident Take Permit (already a permit issued to nonresidents who take wild Minnesota raptors under the current regulations). The need to apply for a Nonresident Take Permit when transferring a wild Minnesota raptor was added to prevent a loophole in the current system where residents may capture raptors then transfer them to nonresidents to work around any potential export restrictions in Nonresident Take Permits for species with depleted populations. Minnesota falconers originally requested a Minnesota Nonresident Take Permit category so that they would be allowed to take raptors in other states, most of which have reciprocity requirements (either for the individual species or for nonresident take in general) that would not allow Minnesota residents to take birds in that state unless that state’s residents are allowed to take birds in Minnesota.

Under the current and proposed regulations, fees for the permits cannot be assessed to capture the time spent processing the permits because a change in Minnesota statutes would be required. Therefore, the proposed regulations should have a net zero effect on the current DNR budget. In the future, the DNR may seek authority to collect fees for falconry and associated permits.

The DNR has determined that there are no less costly methods for achieving the purpose of part 6238 for the permittee.

- The application process, inspection and facilities requirements, and raptor transfer requirements are mandated under federal regulations and are part of current regulations; therefore, the proposed regulations should not require any additional time on the part of falconers. Some time may be saved through on-line transfer reporting.
- Reporting requirements that are not mandated under federal regulations; applications for Nonresident Take Permits, Eagle Permits, and Abatement Permits; and notification for importing non-native or hybrid raptors, may be done electronically to save time for permittees.
- Some falconers may incur a direct one-time cost if they fly hybrid raptors and raptors that are not native to Minnesota because they will need two transmitters when hunting with these birds (most falconers hunt with one transmitter on their raptor already). The requirement for two transmitters on hybrid raptors is a federal requirement; the requirement for non-native raptors to have two transmitters is not. The state requirement for both categories of birds to have the same restrictions was deemed necessary because preventing introductions of harmful exotic species is the least costly method to minimize harm from those species to the state's resources. The direct cost of transmitters to falconers was weighed against yet another invasive species issue that would cost the taxpayers far more money in the future to try to resolve.

The DNR has determined that there are no sound methods for achieving the purpose of Minnesota Rules, chapter 6238 that are less intrusive.

- The least intrusive method of achieving the mandated federal requirements would be to adopt federal regulations as is (option B below), to disregard invasive species concerns (adopting option F below), forego updates to the raptor propagation program (adopting option D below), and adopt federal abatement regulations as is (adopting option H below). As discussed below under question number 4, adoption of those alternatives would not be reasonable.
- The paperwork requirements for the program are kept at the minimum. Documents required under the proposed regulations are either required by federal regulations or are necessary to issue or maintain the state permits. Most paperwork can be submitted online (application, renewal, raptor transfer paperwork, correspondence, annual reports, etc.).
- Annual reports are currently required for Nonresident Take and Propagation permittees, but were discontinued in 2005 for Falconry Permittees due to complaints by the falconers that the old report format was too time consuming and redundant. However, the annual reports were valuable in maintaining accurate state and federal records (an accurate database is a federal requirement). Since the falconry annual reports were discontinued, numerous errors have arisen in the state database, usually as a result of lapses by permittees in submitting their required transfer reporting forms. Therefore, annual reporting is reinstated in the proposed regulations but with a more streamlined process. An annual report will be computer generated from the permittees' raptor transfer submissions listed in the database and sent to each permittee. If the permittee has been submitting their paperwork as required under state and federal regulations, they should have to do nothing more than verify that the information in the database is correct with their signature, If not, they must then submit the delinquent paperwork

(under federal regulations they must submit raptor transfer information within 10 days of the transfer). Annual reports will be required for Abatement Permittees (they are already required under the federal Abatement Permits).

“4. a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

The alternative methods considered but rejected for achieving the purpose of the rule were:

- (A) termination of the state’s falconry and raptor propagation programs;
- (B) replacing current state regulations with a general adoption of the federal falconry regulations;
- (C) making the minimum amount of changes to the state regulations that would achieve compliance with the federal requirements;
- (D) not updating the raptor propagation program;
- (E) not allowing permittees to possess non-native or hybrid raptors;
- (F) not changing the invasive species language with regard to non-native raptors;
- (G) not allowing the use of falconry raptors for abatement activities; and
- (H) adopt federal abatement regulations as is.

The alternative chosen was a middle ground between alternatives (B) and (C) with language that addressed invasive species issues, the growing raptor propagation program, and the need for the creation of a state Abatement Permit.

Alternative (A) was briefly considered since the permitting program is currently not revenue neutral (self-supporting). A statute change would be required to collect permit fees that would recoup at least a portion of the cost required to administer the program. Although falconry is a hunting sport, the program is currently funded from the DNR Nongame Wildlife Program since raptors are considered nongame species. Alternative (A) was rejected because it would have caused a major disturbance in the lives of the small, but very passionate group of falconers, and the issue of funding may be revisited in the future.

Alternative (B) was rejected because the change would have resulted in a dramatic overhaul to established administrative procedures for the falconry program, and may have had unforeseen consequences to established protocols. The differences between the state and federal programs are expanded further under question number 7 in this section and in the rule by rule analysis. Additionally, input received from the birding community (a much larger community than the falconry community) suggested they would not be receptive to a pure adoption of federal regulations since those regulations are much less restrictive on wild raptor take than current Minnesota regulations. In the proposed regulations, the allowed wild Minnesota raptor take will not increase from the current state regulations.

Alternative (C) was rejected due to 1) early input from the Minnesota falconry community, 2) it did not address legitimate concerns regarding invasive species, and 3) it did not incorporate needed changes to requirements for propagation. During the early public input phase, the falconers had strong objections to the initial draft of the proposed regulations, which was generally consistent with current state regulations. The falconers felt current state regulations were too restrictive, so the proposed regulations were adjusted to align more with the federal regulations, but without

requiring the massive changes to administration associated with completely adopting the federal regulations, and retaining some state restrictions to avoid objections by the birding community.

Alternative (D) was rejected because the raptor propagation program has grown over time and is expected to continue to increase as more people want “designer” raptors (hybrids raptors and non-native species) and as more states restrict the species of raptors that may be taken from the wild. The original propagation standards were minimal because there was only one raptor propagator at the time of inception of the current regulations. The proposed regulations address the distinction between small-scale hobby breeders versus large-scale breeding operations for commercial, scientific, or reintroduction purposes. The proposed regulations require that the large propagation facilities have a sustainable plan for housing and caring for the proposed quantity of raptors. Also, the updated regulations include language that requires propagators, especially those that have not undergone sponsorship and proven their abilities by practicing falconry, to submit paperwork regarding their qualifications to ensure that only qualified individuals are permitted.

Alternative (E) was rejected because falconers and propagators would have strongly opposed such restrictions. Many falconers currently have non-native or hybrid raptors that they are very attached to (like other hunters with their dogs) and that they have purchased at great expense. Many propagators also breed raptors for income. The language in the proposed rules is a compromise, which allows the permittees to retain these raptors (unless they become restricted in the future under Minnesota Rules, chapter 6216), yet still protects the native Minnesota environment by requiring transmitters for retrieval.

Alternative (F) was rejected because it did not address the needed changes in the current regulations with regard to the invasive species potential from non-native raptors. Maintaining current falconry practices could potentially produce invasive species issues that would become burdensome on the State’s indigenous wildlife and on taxpayers in the form of funding for eradication/management programs. Small numbers of intentionally released or escaped raptors can, over time, become viable breeding populations. An example of this is the peregrine falcon within Minnesota. Although in this case it was a desired outcome, the recovery of the peregrine population demonstrates that small successive releases over time can result in a viable breeding population. Currently, there are approximately 58 wild nesting pairs of peregrine falcons in the state. The proposed regulations promote a proactive stance against the release of potentially invasive non-native raptors and hybridized raptors into the state’s wild raptor populations.

Alternative (G) was rejected because the demand for the use of falconry raptors for abatement activities has increased in recent years. Using falconry raptors to remove unwanted animals such as birds or rabbits is a cost effective and ecologically sound alternative to trapping or poisoning. Falconers want to be able to conduct abatement activities with their falconry raptors because it is a source of income (under federal regulations and with a federal Special Purposes Abatement Permit falconers may accept payment when conducting abatement services with their captive bred raptors).

Alternative (H) was rejected because there is uncertainty over the final parameters of the proposed federal abatement regulations and because the current federal abatement policies are based only on a memo and factsheet. Currently, federal Abatement Permits are issued as Special Purpose Abatement Permits under Code of Federal Regulations, title 50, section 21.27. The policies governing the Abatement Permits are covered under an August 22, 2007, Migratory Bird Permit Memorandum and a factsheet provided with the permit application. However, the USFWS is in

the initial phases of revising the abatement regulations, and they will potentially be regulated under Code of Federal Regulations, title 50, section 21.33.

“5. the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

Two identifiable categories of affected parties will bear the probable costs of complying with the proposed rule.

DNR Nongame Wildlife Program. 100% of the administrative costs will be borne by the DNR Nongame Wildlife Program since a change in statute would be required to initiate a permit fee on falconers and propagators to offset the state’s costs, and since the USFWS will no longer have an administrative role in the falconry program other than to provide the required leg bands, which are then distributed through the state’s program. The USFWS will still issue Propagation and Abatement permits, but those have never been joint permits with the DNR, so the USFWS bears their own costs for administration as does the DNR. The proposed regulations are expected to result in no net change in administrative time for the DNR, so the probable cost of complying with the proposed rule will be approximately the current cost—30-35% FTE or \$15,660-\$18,270 dollars annually.

Falconers and propagators. The falconers and propagators currently bear 100% of the expense for purchasing their required facilities and equipment to participate in the sport, as well as, the time cost associated with complying with the required paperwork and inspections. This will not change under the proposed regulations. The time needed to comply with required paperwork and inspections in the proposed regulations is estimated to be neutral when compared to current regulations. Depending on the number of birds transferred in a year, the annual time required to comply with the regulations should be no more than 1-5 hours.

As there are no new facilities or pieces of equipment needed, current falconers and propagators will have no added expenses upon implementation of the proposed rules provided their facilities and equipment meet current standards. If they fly non-native or hybrid raptors, the only expense current falconers may incur is the cost of a receiver and two transmitters, if they don’t already have them (most falconers already use receivers and transmitters when flying their birds). According to a common falconry supplier, Northwoods Falconry (prices may differ elsewhere, but prices listed on their website will be used to calculate the cost of equipment needed in this section), the cost of a receiver starts at \$695 and transmitters start at \$139 each.

For new falconers and propagators (who may breed raptors to sell as part of a business venture), the specified required equipment of jesses, leash and swivel, pan of water, and perch (portable bow perch was used for the calculation) for each raptor may be estimated at approximately \$225 in the Northwoods Falconry catalogue. The required facilities may be part of an existing structure (residence, garage, or shed), but must have adequate access, a window, and flooring for drainage and to protect the bird from predators. Assuming they do not have an adequate structure to use, purchasing a basic 6’ x 5’ metal shed with door, window, and minimal turf mat flooring would cost about \$270 based on materials from Menards. The required outdoor weathering area (flight pen) composed of five kennel panels may be constructed for approximately \$300 based on materials from Menards. If they plan to transport their raptor, a giant hood is required which costs \$135 for a canvas avian transport box from Northwoods Falconry. A receiver and two transmitters for a

minimum of \$973 would be required if they plan to fly non-native or hybrid raptors based on prices in the Northwoods Falconry Catalogue.

The above cost estimates are for required items directly listed in the regulations. Falconry is an expensive sport, and the actual cost to participate may be much higher depending on the type of raptors that the permittee plans to fly (male peregrines or Harris hawks may cost between \$400-\$800 with females between \$1500-\$2000 and hybrid gyr/peregrines can be much more), how they acquire their raptors (purchase or capture), how many raptors they have, how lavish their equipment is, if they purchase or construct their equipment, and if they purchase other equipment recommended by their sponsor. Falconers must also feed their raptors appropriate food, which cannot be purchased from the local grocery store. The food (wild game such as rabbits, squirrel, or quail) must be hunted and stored, bred and raised, or purchased through specialty stores or other falconers.

For General and Master Falconers, allowing the use of falconry raptors for abatement purposes in the proposed regulations may offset their falconry costs in part or in full or may become a source of income as part of a business venture. Under the proposed regulations Falconers may accept payment when conducting abatement services with their captive bred raptors.

“6. the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

The Minnesota falconry regulations currently do not comply with the federal falconry regulations; therefore, if the Minnesota falconry regulations are not revised, Minnesota will not be allowed to have a falconry program under Federal Regulations, title 50, section 21.29 (raptor propagation does not have the same restriction, but the state propagation regulations are currently found within the state falconry regulations). If this should occur, the Minnesota DNR would no longer incur the time and expense of running a falconry permitting program; however, all current falconers would have to sell, transfer, or release all of their raptors, thus losing their entire current investment in the sport.

100% of the cost in not adopting the proposed rules would be borne by the current falconers. They would not be allowed to keep their raptors, and the facilities and equipment that they had already purchased would no longer be needed.

“7. an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

Full details on the need for and reasonableness of each rule, including the reason and need for any differences between state and federal regulations, is covered in depth in the rule by rule analysis starting on page 24. The following is a summary of those differences and a brief summary of their reason and need.

Part 6238.1200 DEFINITIONS.

Nonresident Take Permit. This is an inter-state permit, which is not covered under federal regulations. Federal regulations refer to each state’s specific rules on this topic.

Raptors. All strigidae (owls) are allowed under federal falconry regulations. The proposed regulations maintain current state standards, and only allow great horned owls under Falconry Permits. Very few owls other than the great horned owl regularly hunt prey larger than a mouse, so their use in the sport of falconry would be very limited.

Raptors not native to Minnesota. This a term necessary to define raptor species found naturally in Minnesota. The term is not found in federal regulations because they are national in scope.

Season of experience. The term was added after consultation with the falconry community because of the disparity between current state regulations of a year's experience equaling 12 months and the revised federal regulations equaling 4 months. The proposed six month "season of experience" maintains the current high Minnesota falconry standards, but also takes into account actual practices of raptor take, the falconry hunting season, and raptor release.

Wild Minnesota Raptor. The term was added to differentiate between wild raptors (a term in federal regulations, which means any raptor taken from the wild in the United States) from wild raptors caught in Minnesota. The term is particularly relevant to control the export of wild Minnesota raptors under Nonresident Take Permits.

Part 6238.1250 FALCONRY, NONRESIDENT, AND PROPAGATION PERMIT REQUIREMENTS.

Falconry Permit. Nonresidents who practice falconry in Minnesota for more than 120 calendar days must obtain a Falconry Permit. The 120 day designation for these part-year residents is based on federal regulations, which stipulate that falconers who house their raptors for more than 120 days in facilities other than those listed on their Falconry Permit must meet federal standards for those facilities and must be listed on their Falconry Permit (state of residence permit) and that a Falconry Permit in the part-year state may also be required.

Nonresident Take Permit. Nonresident Take Permits are an interstate permit not covered under federal regulations.

Abatement Permit. Federal Abatement Permits are issued as Special Purpose Permits under Code of Federal Regulations, title 50, section 21.27. The policies governing the Abatement Permits are covered under an August 22, 2007 Migratory Bird Permit Memorandum and a factsheet provided with the permit application. The USFWS is in the initial phases of revising the abatement regulations, and they will potentially be regulated under Code of Federal Regulations, title 50, section 21.33. Because there is uncertainty in the final parameters of the proposed federal abatement regulations and because currently the USFWS is governing abatement activities by policy, not regulation, the proposed state rules contain clear regulations on abatement. Any differences between the proposed state abatement regulations and federal abatement policies or the unpublished, proposed federal abatement regulations will be justified in the rule by rule analysis which starts on page 24.

Part 6238.1300 PERMIT QUALIFICATIONS.

Because Propagation Permits are not contingent on also having a Falconry Permit in either the state or federal regulation, clarifying language has been added to ensure that applicants for Propagation Permits are highly qualified individuals who know how to care for and house multiple raptors, can document those qualifications, and have a purpose for the raptors that will be bred (falconry, education, research, reintroduction, or sale). The federal regulations have very specific and extensive requirements for obtaining a Falconry Permit, but require very little of propagators even though they will be caring for and housing many more of the same type of animal that falconers may possess in limited numbers.

Part 6238.1350 PERMIT CLASSES.

Junior Apprentice and Apprentice Permit Classes. The Junior Apprentice Class was created in the proposed regulations to accommodate the change in federal regulations which now allow children as young as 12 to become falconers. The restrictions for Apprentices (a class in federal regulations) and Junior Apprentices (a class for 12-16 year olds only in Minnesota regulations) are identical except the Junior Apprentice Class requires more adult (parent or sponsor) participation by requiring the Junior Apprentice to house their raptors with an adult's raptors.

Federal regulations allow new residents of the United States to become falconers by submitting paperwork from their country of residence. The proposed Minnesota regulations require the new residents of the United States to also fly raptors with a sponsor, under an Apprentice Permit, for at least four months in order to determine their level of proficiency (the standards in other countries may differ from those in Minnesota) and to familiarize them with Minnesota's falconry regulations, particularly regarding the take of wild raptors. If warranted, they then may move up to their appropriate level of experience with the approval of their sponsor and documentation from their country of residence.

In the proposed regulations, both classes of apprentice are restricted to the red tailed hawk for the first two seasons. The restriction was requested by falconers due to the ease with which red tailed hawks transition into falconry compared to most other species, its wide weight range tolerance, and abundant population. Federal regulations allow many different species of wild raptor and captive bred raptors; however, federal regulations are generalized for national application and clearly cannot address each state's different species and population management issues.

General Permit Class. Current state falconry regulations require a falconer to be at least 18 years old before they are eligible to become a General Falconer. The new federal regulations reduced the age requirement for General Falconers by two years to 16. Because of the increased responsibilities that General Falconers are eligible to perform, the proposed regulations keep the minimum eligible age for a General Falconer in Minnesota at 18 years old.

Current state falconry regulations allow General Falconers to possess a maximum of two raptors both of which may be wild caught. Federal regulations now allow a maximum of three raptors, all of which may be wild caught. The proposed regulations maintain the current state maximum. The two wild raptor limit was retained to limit potential impacts

on wild raptor populations in the state, to address concerns expressed by the Minnesota birding community during early input, and because General Falconers tend to have higher raptor mortality than other classes of falconer, most likely because of inexperience caring for multiple species of raptor on their own.

Current state falconry regulations require a minimum of two years (24 months) experience as an Apprentice Class Falconer prior to qualifying for General Class status. The revised federal regulations only require two years experience with four months of possession each year. Under the proposed regulations an Apprentice Falconer will need a minimum of two “seasons of experience” (a minimum of six months with a raptor per year) to be eligible to progress to General Class Falconer. Through consultation with the falconry community, it was determined that revising the standard to a “season of experience” will maintain the current high Minnesota falconry standards, but also takes into account actual practices of raptor take, the falconry hunting season, and raptor release.

Master Permit Class. Similar to changes in experience required to move from Apprentice to General Falconer, the federal regulations reduced the experience required to move from General to Master Falconer (five years experience with four months of possession each year). Current state regulations require a person to be a General Falconer for five years (60 months) before being eligible to upgrade to Master Falconer. The proposed regulations will now require a General Falconer to have five “seasons of experience” before being eligible to upgrade to Master Falconer.

Current state falconry regulations allow Master Falconers to possess a maximum of three raptors, all of which may be wild caught. Federal regulations now allow Master Falconers to possess five wild raptors and any number of captive-bred raptors. The proposed regulations maintain the maximum allowed possession of wild caught raptors at three, but will allow the possession limit to increase to five total raptors (combination of wild caught and captive bred raptors). The three wild raptor limit was retained to limit potential impacts on wild raptor populations and to address concerns expressed by representatives from the Minnesota birding community during early input. The decision to increase the total possession limit from three to five raptors was at the request of the falconers. An increase to five total birds would allow falconers to possess and fly group hunting birds such as Harris Hawks, while still maintaining the current level of care that an individual permit holder is able to maintain for their birds.

Propagator Class Permit. Current federal regulations place very strict standards on falconers, but there are very few restrictions on propagators, which house the same type of animals, and have many of the same practices. Therefore, where necessary to protect the health and welfare of the birds, federal falconry standards apply to raptor propagation in the proposed regulations.

The proposed regulations will have two classes of propagator: Standard Propagator, an individual who breeds and raises raptors, and Specialized Propagator, for large scale propagation operations. The federal Propagation Permit does not include any limits on propagation operations other than to require that the permittee also have a state Propagation Permit if their state requires it. Administrative provisions for state Propagation Permits are left to the states. Large scale facilities require more oversight than

small facilities; therefore, the classification distinction is meant to aid administration of the state propagation program.

Federal regulations allow wild raptor eggs to be taken for propagation, but such take would require expanding the eyas take time period in the proposed regulations, which may negatively impact wild raptor populations (representatives from the birding community indicated that increased impacts on wild raptor populations may result in their opposition of the proposed regulations).

Under the federal regulations, there are no restrictions on the number of wild caught raptors that a propagator may possess under their Propagation Permit. The proposed regulations would limit propagators to six wild caught birds, and limit falconers with Propagation Permits to a total of six wild caught birds between their Falconry and Propagation Permits. The proposed restriction allows propagators to enhance gene flow into their propagation program through introduction of wild raptors, but protects wild raptor populations by preventing the removal of large numbers of wild breeding stock.

Part 6238.1400 RESTRICTIONS ON TAKING RAPTORS.

The proposed regulations include conditions to prevent the depletion of wild raptor populations in Minnesota. These conditions include: limits on the number of raptors that may be taken; restrictions on species of raptors that may be taken; limits on the geographical area where raptors may be taken; and restrictions on when raptors may be taken. Raptor species are not distributed equally across the United States, so applying the general federal regulations would be problematic. Take restrictions resulting from species population trends specific to Minnesota may be administered under this section.

Federal regulations require falconers who cause a raptor to be injured during taking activities to transport that bird to a veterinarian or rehabilitator, but federal regulations do not require that the injury be reported. The proposed regulations require permittees to report raptor injuries incurred during trapping. Tracking this information is important to determine whether certain individuals or trapping methods need further review. Raptor injuries during trapping are not frequent.

The time periods for eyas (nestling) take and passage raptor (a juvenile raptor under a year old that has left the nest and is capable of flight) take have been extended in the proposed regulations compared to existing regulations. Under the federal regulations, each state must determine the appropriate take time period and duration suitable for their state.

6238.1450 RESTRICTIONS ON IMPORTING RAPTORS INTO MINNESOTA.

There are restrictions on importing raptors to the United States within the federal regulations, but they leave restrictions for import and export of species between states at the discretion of each state.

Native raptors. For raptors that are native to Minnesota (some portion of their lifecycle occurs in Minnesota), a permittee will only have to report the possession as they do for any other acquisition. However, anyone importing a bird into Minnesota must obtain a Minnesota Board of Health Certification from a veterinarian to comply with Minnesota

Rules, part 1700.4200. That certification must be included with their acquisition notification.

Hybrid and non-native raptors. For hybrid and non-native raptors, in addition to their acquisition form and Board of Health Certification noted above, a permittee must notify the commissioner 10 days prior to obtaining the hybrid or non-native raptor. The notification requirement for hybrid and non-native raptors is a protection for the falconers. If the raptor that the permittee intends to import has invasive species restrictions under Minnesota Rules, part 6216, the permittee will be warned prior to acquisition.

Part 6238.1500 FLYING AND INTENTIONAL RELEASE OF RAPTORS.

Federal regulations require falconers and propagators who fly hybrid raptors to have two transmitters attached to their raptor. However, because the federal regulations are national in scope, they do not address raptors that may be non-native to a state. Therefore, in the proposed regulations both hybrid raptors and raptors that are non-native to Minnesota are required to have two transmitters.

The proposed regulations require that permittees intending to release raptors held in captivity for long periods make a reasonable determination that the bird can survive in the wild, i.e. do they recognize and eat wild food items? This requirement is not contained in federal regulations. Since captive raptors often get their food in ready to eat bite sized morsels, catching and eating food in its natural form can be challenging. If they are unable to perform this most basic survival task, one can reasonably assume that the raptor will not survive for long in the wild.

Part 6238.1550 TRANSPORTING, RELOCATING, AND HOLDING OF RAPTORS.

Under the proposed regulations, falconers and propagators must report a permanent change of address within five days of the move, which is consistent with the minimum federal requirement (there are other federal regulations which allow up to 30 days to update Falconry and Propagation permits).

Under the proposed regulations, permittees may allow another person to temporarily care for their raptors in accordance with federal regulations. However, they must inform the commissioner in writing within 10 days of the loan or transfer detailing where the raptor will be housed, who is to care for the raptor, what the person is allowed to do with the raptor (falconers may fly another person's falconry birds under federal regulations), and approximately how many days the raptor is expected to be under the care of the other person. The appropriate transfer forms must be filed if the caretaker is a falconer or a propagator.

The procedures in the proposed regulations for temporary facilities retain the 30 day maximum allowed under current regulations but have been updated to accommodate longer possession allowances under the revised federal regulations provided authorization to extend that time is obtained from the DNR.

Part 6238.1650 REPORTING REQUIREMENTS.

Under the revised federal regulations, falconers now are allowed to use their falconry raptors in a propagation program without transferring them to the Propagation Permit provided the raptor is used in propagation for less than 8 months in a given year. The proposed regulations allow this only if the propagation program is the falconer's own propagation program. Transfer paperwork would still be required for raptors that were moving from one individual's Falconry Permit to a different individual's Propagation Permit. This requirement is necessary for tracking purposes and to ensure that those birds "loaned" for propagation return to the correct permittee or are transferred if that is the desire of the possessor of the raptor.

Federal regulations allow permittees 30 days to search for their raptor if it is lost. The proposed regulations allow permittees 30 days to search for their raptor prior to submitting the reporting form; however, if the raptor is a hybrid or non-native raptor, its loss must be reported within 48 hours in accordance with state invasive species regulations under Minnesota Rules, part 6216.0280.

Part 6238.1700 PERMIT DURATION, RENEWAL, AND TERMINATION.

The allowed duration for Propagation Permits changed from three years to five years under the revised federal regulations. The proposed regulations will not change the three year duration under the current state regulations. Most propagators are falconers, so at the time of renewal for their state permit, they only need to submit one form to renew both permits. Also, when the expiration for a permittee's propagation permit does not coincide with the expiration for their Falconry Permit, permittees often need more reminders to renew, which is an inefficient use of state time.

Current regulations provide for permit revocation and seizure/confiscation of all raptors held if a falconer or propagator cannot or will not follow regulations. The proposed regulations also have a second part regarding high incidences of raptor loss or mortality. The USFWS is no longer administering Falconry Permits (they are only overseeing state programs); therefore; the administrative necessity of revoking a permit is left up to the state.

Part 6238.1750 DISCLAIMER OF LIABILITY

The final part in the proposed language is a disclaimer of liability in the event that a falconer, propagator, or third party is injured in the course of participating under one of these permits. The language is standard and was copied from the rehabilitation regulations in part 6244.1800 and wildlife exhibit regulations in part 6244.3200. There is no comparable provision in the federal regulations.

"8. an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule."

The proposed rules are meant to be used in conjunction with Federal Regulations, title 50, sections 21.29 and 21.30. The purpose of the federal regulations is to outline the minimum falconry and propagation regulations that states must follow. The proposed regulations

pertaining to Abatement Permits are meant to be used in conjunction with the Code of Federal Regulations, title 50, section 21.27 for federal Abatement Permits under the August 22, 2007 Migratory Bird Permit Memorandum. Certain provisions in the current state regulations have been removed from the proposed regulations where they would be redundant to the federal regulations. Examples include provisions relating to facilities and equipment requirements, Eagle Permit requirements, or feather/raptor corpse disposal. The proposed Minnesota regulations address areas where Minnesota has elected to be stricter than federal regulations (differences are outlined in question #7 on page 15), include provisions to address state administration, and adhere to other areas of current Minnesota statutes or rules (described in the rule-by-rule analysis starting on page 24).

The proposed regulations, in combination with the applicable federal regulations (see above), constitute the primary set of regulations pertaining to the practice of falconry, raptor propagation, and abatement using raptors in Minnesota. However, certain other state laws and regulations relate to these activities, including the following: Minnesota Statutes, sections 97B.601 (small game licenses) and 97B.801 (migratory waterfowl stamps); and Minnesota Rules, parts 1700.4200 (necessary health certifications for importing birds) and 6234.0800 (hunting with falcons), and chapter 6216 (invasive species). Where appropriate, references to these regulations and statutes were incorporated into the proposed regulations to aid permittees in compliance. Because the proposed rule is a revision of regulations currently in effect, there will be only minimal changes in the cumulative effect on the regulated community, other stakeholders or the state's natural resources. When considered with other state and federal regulations, the proposed rule represents the minimum requirements necessary to responsibly manage the practice of falconry and raptor propagation in Minnesota.

As part of an analysis on the cumulative effect that the proposed changes would have on the current regulations, Minnesota Rules, chapter 6238 was re-written entirely. Parts 6238.0100 to 6238.1100 were repealed and replaced with parts 6238.1200 to 6238.1750. The repeal of the current parts in favor of replacing them with a concisely written and organized replacement was done to aid the permittee's ability to adhere to the proposed regulations.

PERFORMANCE-BASED RULES

Many of the requirements in the proposed changes were necessary under federal regulations, to administer requirements contained in federal regulations, or under other sections of state regulations, so their inclusion was, at a minimum, necessary. Therefore, upon implementation of the proposed regulations, the falconers and propagators will still be expected to learn how to hunt with and care for their raptors in a humane and healthy manner, but certain regulations have become more lenient in an effort to maximize flexibility for the regulated parties while still meeting the agency's regulatory objectives.

Minimum federal permit requirements will be followed under the proposed regulations, which are already minimum state permit requirements; however, the proposed requirements for permit upgrades are more flexible than current state regulations in that a permittee may start falconry at a younger age, move through levels more quickly (because falconry seasonality has been taken into account), have more raptors under Master Falconry Permits, etc. (See the rule-by-rule analysis for a more in-depth analysis of each change). Federal facility standards and inspections that will be followed under the proposed regulations are similar to existing state regulations, but falconers will now be allowed to keep their raptors in their place of residence and to keep compatible raptors

together. The proposed rules will allow more time for permittees to submit their required raptor transfer paperwork, and they are encouraged to be submit it electronically. They will also have the ability to use their own falconry birds for their own raptor Propagation Permit without having to submit paperwork to do so, which saves paperwork for both the raptor propagator and agency. Falconers will be allowed to use their falconry birds in abatement activities and for educational purposes as outlined under federal regulations. Falconers will also be allowed to receive rehabilitation raptors onto their Falconry Permit and to act as rehabilitators in accordance with federal and state regulations, which will allow the rehabilitation program to potentially save more injured wildlife than it is currently able to do.

ADDITIONAL NOTICE

Additional notice on the proposed rules will be provided to persons or classes of persons who could be affected, using the following methods:

- Sending the notice of intent to adopt rules with or without a public hearing to all interested persons who submitted comments in response to the Department's Request for Comments.
- Sending information to all current falconers and raptor propagators, Audubon Minnesota, The Raptor Center, and Hawk's Ridge Bird Observatory.
- News releases that detail the major parts of the rule will be issued statewide.
- Using DNR web site to inform the public of our intent to adopt rules and take requests for hearings.

Our Notice Plan also includes giving notice required by statute as follows:

- We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under *Minnesota Statutes*, section 14.14, subdivision 1a.
- We will also give notice to the Legislature per *Minnesota Statutes*, section 14.116.

Our Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per *Minnesota Statutes*, section 14.111.

Our Notice Plan does not include notifying the state Council on Affairs of Chicano/Latino People because the rules do not have their primary effect on Chicano/Latino people per *Minnesota Statutes*, section 3.922.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by *Minnesota Statutes*, section 14.131, the Department will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before the Department's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that the proposed rules will not require any local government to adopt or amend any ordinance or other regulation because falconry and raptor propagation are already in practice statewide. The proposed regulations do not interfere with any local ordinance, nor do they create any incentive or disincentive to adopt or amend a local ordinance that may apply to aspects of falconry, raptor propagation, or abatement. The changes to the rules have been proposed because of a specific federal regulatory mandate that requires each state to comply with their rules before January 1, 2014.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The proposed regulations do not impact small cities, and they do not require any business (raptor propagation) to purchase anything that they are not already required to have under the current regulations as described in the Regulatory Analysis section of this SONAR under question #1 on page 7 regarding persons bearing cost of these regulations or under question #5 on page 14 regarding probable cost of complying with these regulations.

The rules are being proposed under a specific federal regulatory mandate. The federal law that mandates the proposed rules is discussed in more detail in the rule-by-rule analysis starting on page 24 of this SONAR. Therefore, under Minnesota Statutes, section 14.127, subdivision 4(b), no small business or small city can claim a temporary exemption from the proposed rules.

LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

Heidi Cyr, Falconry Coordinator, Department of Natural Resources, will testify about federal requirements and proposed regulation changes.

Carrol Henderson, Nongame Wildlife Program Supervisor, Department of Natural Resources, will testify about federal requirements and proposed regulation changes.

RULE-BY-RULE ANALYSIS

The rule by rule analysis will detail the need for and reasonableness of each rule, including the reason and need for any differences between state and federal regulations or the reason and need for any differences between current regulations and proposed regulations.

Unless otherwise cited, all references to “current rules” or “current regulations” refer to Minnesota Rules, parts 6238.0100 to 6238.1100. The proposed rules will repeal the “current rules” and replace them with Minnesota Rules, parts 6238.1200 to 6238.1750. The references to rule numbers in the following rule by rule analysis follow the new rule numbers; therefore, references to “current rules” will not be found under the parts listed, but within current rule parts 6238.0100 to 6238.1100. General references to “federal regulations” refer to Code of Federal Regulations, title 50, sections 21.29 (falconry) and 21.30 (raptor propagation). Reference to “federal abatement regulations” refer to Code of Federal Regulations, title 50, section 21.27 with accompanying August 22, 2007, Migratory Bird Permit Memorandum and current guidelines contained within the federal Abatement Permit application. References to “proposed federal abatement rules” refer to preliminary, unpublished proposed changes to the Code of Federal Regulations, title 50, section 21.33.

Input attributed in the line-by-line analysis to falconers, the falconry community, or propagators was obtained from current or former permittees during the initial input period or during the Request for Comments period. Input attributed to the birding community was obtained from members of the public who are active or employed in birding related positions in Minnesota (Audubon Minnesota, The Raptor Center, Hawk’s Ridge Bird Observatory, etc.) or from agency personnel (DNR or USFWS) with applicable expertise. Input was obtained orally (over the phone or in person during meetings) or written (questionnaire responses or emails).

6238.1200 DEFINITIONS.

With the adoption of the federal standards into the proposed Minnesota falconry regulations, many new terms needed to be defined; additionally, updated language for a couple of terms in the federal regulations was adopted into the Minnesota regulations for standardization purposes. The terms added or refined are listed below. Additional discussion of some of the terms can be found in the SONAR sections pertinent to their use.

Words that needed updated definitions were:

- Bred in captivity or captive-bred: The practice of artificial insemination was added to the definition to keep the term relevant to procedures in use by raptor propagators.
- Falconry or practice of falconry: The interchangeable term “practice of falconry” was added for clarity. The definition was updated to match federal regulations. “Falconry” or “practice of falconry” means caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. Falconry includes the taking of raptors from the wild to use in the sport; and caring for, training, and transporting raptors held for falconry.
- Falconry Permit: The definition was updated to include nonresidents who practice falconry in Minnesota for more than 120 days within a year. Implementation of federal regulations required the consideration of these part-year residents in Falconry Permits.
- Nonresident Take Permit: The name of the permit changed from “Raptor Permit” to “Nonresident Take Permit” to more accurately describe the permit and to decrease

confusion, since that is the term people use when requesting the permit. Additionally, the definition was updated to more accurately reflect when a Nonresident Take Permit is required. The proposed regulations require that a nonresident who takes a wild Minnesota raptor, as well as those that receive a wild Minnesota raptor obtain a Nonresident Take Permit.

- Passage raptor: The term “fledged” was added to differentiate passage raptors from those juveniles that are still bound to the nest.
- Propagation Permit: The definition was updated to more accurately define the permit.
- Raptor: The definition was updated to remove the term “live” since the disposal of carcasses and feathers is regulated under these regulations. The exclusion of golden eagles within the definition of the family Accipitridae was removed because falconers are allowed to possess golden eagles. The proposed regulations maintain current state standards for the family strigidae (owls), and only allow great horned owls under Falconry Permits (federal regulations do not restrict owl species). Very few owls other than the great horned owl regularly hunt prey larger than a mouse, so their use in the sport of falconry is limited. Additionally, certain species of owl, like the Snowy Owl (*Nyctea scandiaca*) are very temperamental which results in a higher mortality rate in captivity.
- Take: The definition was updated to match current practices and reflect the actual usage under the permits. "Take" means to trap, capture, or attempt to trap or capture wild raptors, their eggs, or their sperm for falconry or propagation purposes. The regulations regarding raptor take are found under Minnesota Rules, part 6238.1400.

Newly defined words are:

- Abatement: The term was added due to its inclusion in federal regulations that will be implemented into the proposed regulations. The federal definition was adopted.
- Abatement Permit: The term was added to define when a permittee must obtain this new type of permit.
- Commissioner: The term was added due to its pervasive use in the text of the proposed regulations.
- Federal regulations: The term was added due to its pervasive use in the text of the proposed regulations. Federal regulations in this section refer to Code of Federal Regulations, title 50, sections 21.29 and 21.30.
- Hacking: The term was added due to its inclusion in federal regulations that will be incorporated into the proposed regulations. The federal definition was adopted.
- Hybrid: The term was added due to its inclusion in federal regulations that will be incorporated into the proposed regulations. A modified version of the federal definition was adopted.
- Imprint: The term was added due to its inclusion in federal regulations that will be incorporated into the proposed regulations. The federal definition was adopted.
- Raptors not native to Minnesota: The term was added to more clearly define the raptors that are indicated by this term.

- **Season:** The term was added to more accurately reflect current practice in the sport of falconry. The definition reflects when raptors are generally taken, when they are used for hunting, and when they are released.
- **Season of experience:** The term was added to define the minimum amount of time within a season that a falconer must possess a raptor on their permit in order to count as experience for moving up to the next class of falconer.
- **Wild Raptor:** The term was added due to its inclusion in federal regulations that will be incorporated into the proposed regulations. The definition found within the text of the updated federal regulation was adopted.
- **Wild Minnesota Raptor:** The term was added to differentiate between wild raptors caught in Minnesota and those caught outside the state. The term is particularly relevant to control the export of wild Minnesota raptors under the Nonresident Take Permits.

6238.1250 PERMIT REQUIREMENTS.

Falconry, Propagation, and Nonresident Take Permits are permits issued under the current regulations and will continue to be issued under the proposed regulations; however, the term “Nonresident Take Permit” has been substituted for the previously termed “Raptor Permit” to more accurately reflect the nature of the permit. The proposed language in this part has been updated to clarify when a nonresident falconer needs to obtain a Minnesota Falconry Permit, a Nonresident Take Permit, or if the Falconry Permit issued by their state, tribe, or territory will suffice. The Abatement Permit is a new type of permit that falconers may obtain in order to use their captive bred falconry raptors in abatement activities (removal of unwanted animals). All permits under this section may contain conditions that specify measures to prevent adverse impacts to wild populations; restrictions for compliance with other game and fish laws; and other restrictions the commissioner deems necessary for public health and safety and for the welfare of raptors described in this chapter.

Falconry Permit. All residents of Minnesota who practice falconry and nonresidents who practice falconry in Minnesota for more than 120 calendar days must obtain a Minnesota Falconry Permit. The 120 day term is based on federal regulations (below), which stipulate that falconers are only allowed to house their raptors in temporary facilities for no more than 120 consecutive calendar days; after 120 days their facilities must meet federal standards and must be listed on their Falconry Permit (state of residence permit). Issuance of a Minnesota Falconry Permit to these part-year residents is important for tracking purposes and to ensure that they are in compliance with Minnesota regulations, including that their facilities are maintained in accordance with federal standards.

Federal Regulations, title 50, section 21.29

(c)(1)(iii) If you reside for more than 120 consecutive days in a State or territory or on tribal lands other than the location of your primary residence, your falconry facilities in the second location must meet the standards in paragraph (d) of this section and of the corresponding State, tribal, or territorial lands, and your facilities must be listed on your falconry permit.

(d)(5) Temporarily housing a raptor outside of your permanent facilities when you are not transporting it or using it for hunting. You may house a raptor in temporary facilities for no more than 120 consecutive calendar days if the bird has a suitable perch and is protected from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(d)(8) Residence part of the year in another jurisdiction. (i) The State, tribe, or territory in which you live part-time may require that you obtain its falconry permit. You must contact the State, tribal, or territorial agency that regulates falconry to determine whether you need a permit.

(ii) If you live for more than 120 consecutive days in a State or territory or on tribal lands other than where you maintain your primary residence, your falconry facilities in the second State must meet the standards in this section.

No Minnesota Permit Required. Nonresidents who have a valid Falconry Permit from their state, tribe, or territory of residence may practice falconry within Minnesota for up to 120 days without obtaining any form of Minnesota Falconry Permit. They may also transfer, sell, or purchase a raptor without a permit provided it is not a raptor that was obtained from the wild in Minnesota.

Nonresident Take Permit. A Nonresident Take Permit is required for a nonresident to obtain a wild Minnesota raptor and remove it from Minnesota. This requirement is necessary to ensure nonresidents abide by Minnesota regulations with regard to taking a raptor, and to control the export of wild Minnesota raptors to preserve wild populations from over-harvesting by nonresidents or residents who take a raptor and then transfer it out of state. Certain species, such as goshawks, are in decline, and other states have already placed restrictions on their take, so Minnesota has become a source for these species for out-of-state falconers. Allowing some nonresident take in Minnesota is desired by Minnesota falconers because many states have reciprocity agreements, whereby those states do not allow nonresidents to take birds in their state if the home state of that falconer doesn't allow nonresident take. Once the raptor has been transferred to the nonresident (out of the state), a Nonresident Take Permit is not required to keep the raptor (i.e. renewal of the permit for the life of the bird is not required), and all subsequent transfers of the raptor are not tracked (i.e. subsequent recipients of the raptor do not need to obtain a Nonresident Take Permit).

Propagation Permit. The proposed language for Propagation Permits has been updated for clarity and to reflect current practices for when a Propagation Permit is necessary.

Abatement Permit. The proposed Abatement Permit is a new permit for falconers so that they may use their captive bred falconry raptors in abatement activities. Requests to use falconry birds in abatement are frequent. Abatement refers to the removal of unwanted animals, for example, recent requests were for the removal of gulls from garbage dumps and crows from parking garages. Using falconry raptors to remove unwanted animals such as birds or rabbits is a cost effective and ecologically sound alternative to trapping or poisoning. Falconers want to be able to conduct abatement activities with their falconry raptors because it is a source of income (under federal regulations and with a federal Special Purpose Abatement Permit falconers may accept payment when conducting abatement services with their captive bred raptors).

Federal abatement regulations require a falconer to have a Special Purpose Abatement Permit in order to use their falconry raptors or their abatement raptors to pursue and take depredating birds or other wildlife to mitigate damage. The federal Abatement Permit authorizes permittees to charge a fee for providing abatement services. Federal Abatement Permit holders may also have subpermittees under their Abatement Permit.

There are some differences between the current federal abatement policy outlined under the August 22, 2007, Migratory Bird Permit Memorandum, the factsheet provided with the federal Abatement Permit application, and the initial unpublished draft of the federal abatement regulations that will potentially be codified under Code of Federal Regulations, title 50, section

21.33. Therefore, to keep the state permittees in compliance with current or proposed federal regulation and to ensure that practices of Minnesota Abatement Permittees meet state standards, the state Abatement Permit may contain specifications on raptors authorized for use in abatement activities; qualifications, requirements, and restrictions for subpermittees; requirements on raptor transfers between Abatement Permittees and their subpermittees; and other requirements necessary to administer Abatement Permits, the raptors used for abatement, and abatement jobs performed.

Normal use of falconry raptors by falconers during the game season will not require a state Abatement Permit (or federal Special Purpose Abatement Permit), even if the hunting act abates (disturbs) game species at the request of another individual, provided that service is not done for a fee.

August 22, 2007, Migratory Bird Permit Memorandum (USFWS)

Falconry and abatement are fundamentally different activities. Falconry is the act of using a trained raptor to hunt quarry for sport. Abatement is the act of using a trained raptor to flush, haze, or take depredating birds to mitigate the depredation (including human health and safety) problem caused by those birds. If carried out in the context of practicing falconry (e.g., hunting or training the raptor to hunt) and if no payment is received, falconers may conduct abatement like activities without an SPA permit (because such activities are considered the practice of falconry and not abatement for the purposes of this memorandum.)

6238.1300 PERMIT QUALIFICATIONS.

The proposed language for permit qualifications has been modified for clarity and updated to reflect federal regulations. In order to obtain a Minnesota Falconry Permit, applicants have always been required to submit an application, score at least 80% on the falconry exam, submit a letter from a sponsor, and submit to facilities and equipment inspections (qualifications also required under federal regulations). Proposed changes from current regulations are:

Sponsorship. For beginning falconers, a letter from a current falconer to act as their sponsor is required under current state regulations as well as federal regulations, and it will not change under the proposed regulations. Provisions for new residents of the United States to obtain a sponsor and for those who have had their permit revoked were added to accommodate language in the federal regulations.

Facilities and equipment. The current state regulations for equipment and facilities standards have been removed in the proposed regulations in deference to the thorough requirements listed in the new federal regulations (state requirements for inspection of equipment and facilities remain in the proposed rules). The new federal regulations (below) are substantially the same as the current state regulations for equipment standards; however, there are several differences in the facilities standards. Primarily, raptors may now be housed in a place of residence, compatible raptors may be housed together, and outdoor weathering areas must now be covered regardless of fence height (protection from avian predators). Federal language also allows the State to determine whether both an indoor facility (mews) and an outdoor facility (weathering area) are necessary. Current Minnesota regulations require both, so that same requirement is included in the proposed regulations. The climate in Minnesota is so varied that it would be insufficient to only house a raptor either indoors or outdoors all year long. Most falconers build a structure akin to a dog house with attached kennel.

Federal Regulations, title 50, section 21.29

(d)(1) Facilities you must have and maintain . You must keep all raptors you hold under your falconry permit in humane and healthful conditions.

(i) Whether they are indoors (a “mews”) or outdoors (a “weathering area”), your raptor facilities must protect raptors in them from the environment, predators, and domestic animals. You are responsible for the maintenance and security (protection from predators) of raptors you possess under your permit.

(ii) You must have raptor housing facilities approved by your State, tribe, or territory before you may obtain a bird to use in falconry. Your State, tribe, or territory may require that you have both indoor and outdoor facilities. A representative of your agency that regulates falconry, or its designee, must certify that your facilities and equipment meet the following standards:

(A) For housing raptors indoors or outdoors, the facility must protect raptors from predators and domestic animals.

(1) The facility must have a suitable perch for each raptor, at least one opening for sunlight, and must provide a healthy environment for raptors inside.

(2) You may house untethered raptors together if they are compatible with each other.

(3) Each raptor must have an area large enough to allow it 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.

(4) Each falconry bird must have access to a pan of clean water unless weather conditions, the perch type used, or some other factor makes access to a water pan unsafe for the raptor.

(B) An indoor facility must be large enough to allow easy access for the care and feeding of raptors kept there.

(1) If raptors you house in this indoor facility are not tethered, all walls that are not solid must be protected on the inside. Suitable materials may include vertical bars spaced narrower than the width of the body of the smallest raptor you house in the enclosure. However, heavy-duty netting or other such materials may be used to cover the walls or roof of the enclosure.

(2) Acceptable indoor facilities include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and allow them to maintain healthy feathers.

(3) An eyas raptor may be kept in any suitable container or enclosure until it is capable of flight.

(C) You may keep a falconry raptor or raptors inside your place of residence if you provide a suitable perch or perches. If you house your raptor(s) inside your home, you do not need to modify windows or other openings of the structure. Raptors kept in your home must be tethered when they are not being moved into or out of the location in which they are kept.

(D) An outdoor facility must be totally enclosed, and may be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material.

(1) The facility must be covered and have at least a covered perch to protect a raptor held in it from predators and weather.

(2) The facility must be large enough to insure that the birds cannot strike the enclosure when flying from the perch.

(3) New types of housing facilities and/or husbandry practices may be used if they satisfy the requirements above and are approved by the State, tribal, or territorial authority regulating falconry.

(iii) You may keep falconry raptors outside in the open if they are under watch, such as by you or a family member at any location or, for example, by a designated individual in a weathering yard at a falconry meet.

(iv) You must inform your State, tribal, or territorial agency within 5 business days if you change the location of your facilities.

(d)(3) Equipment you must have and maintain. You must have jesses or the materials and equipment to make them, leash and swivel, bath container, and appropriate scales or balances for weighing raptor(s) you possess.

Signed statements. Federal regulations also require the state to promote falconer and propagator compliance with the federal falconry and raptor propagation regulations by requiring signed statements, most of which were formerly submitted on the federal falconry application. The statements affirm that the falconer or propagator has read and understands all applicable state and federal regulations; will thereafter maintain the facilities and equipment to the standards as set forth in federal regulations; and will allow inspection of their facilities, equipment, raptors, and supporting documentation as outlined in federal regulations. The basic requirements for this signed statement are outlined under Federal Regulations, title 50, Section 21.29:

Federal Regulations, title 50, section 21.29

(g)(3)(ii) An original, signed certification that you are particularly familiar with §10.13 of this subchapter, the list of migratory bird species to which the Migratory Bird Treaty Act applies; part 13 of this subchapter, general permit regulations; part 21 of this subchapter, migratory bird permits; and part 22 of this subchapter, eagle permits. The certification can be incorporated into tribal and State application forms, and must be worded as follows:

I certify that I have read and am familiar with the regulations in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, and that the information I have submitted is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.

(d)(2)(ii) You must submit to your State, tribal, or territorial agency that regulates falconry a signed and dated statement showing that you agree that the falconry facilities and raptors may be inspected without advance notice by State, tribal (if applicable), or territorial authorities at any reasonable time of day, but you must be present. If your facilities are not on property that you own, you must submit a signed and dated statement showing that the property owner agrees that the falconry facilities and raptors may be inspected by State, tribal (if applicable), or territorial authorities at any reasonable time of day in the presence of the property owner; except that the authorities may not enter the facilities or disturb the raptors unless you are present.

(d)(9) Inspections. Falconry equipment and records may be inspected in the presence of the permittee during business hours on any day of the week by State, tribal, or territorial officials.

Federal Regulations, title 50, section 21.29

(d) Inspection. In the presence of the permittee, Federal or State officials may inspect propagation raptors, facilities, equipment, and records during business hours on any day of the week.

Propagation Permit. Because Propagation Permits are not contingent on having a Falconry Permit, clarifying language has been added to ensure that applicants for Propagation Permits are highly qualified individuals who know how to care for and house multiple raptors, can document those qualifications, and have a purpose for the raptors that will be bred (falconry, education, research, reintroduction, or sale).

Federal Regulations, title 50, section 21.30

(w) Criteria for issuing a permit. When we receive a completed application, we will decide whether we should issue a permit to you. We will consider the general criteria in part 13 of this chapter and the following factors:

- (1) You must be at least 18 years old and have at least 2 full years of experience handling raptors.*
- (2) You must have a propagation permit or other authorization for raptor propagation from your State or Tribe, if your State or Tribe requires it.*
- (3) Your raptor propagation facilities must be adequate for the number and species of raptors to be held under your permit.*

Eagle Permit. Eagles used in falconry are currently allowed under a Special Permit without a formal application. Under the revised federal regulations, more standardized information is required to obtain an Eagle Permit; therefore, under the proposed Minnesota rules, an application must be submitted with the required documentation outlined under the following federal regulations:

Federal Regulations, title 50, section 21.29

*(c)(2)(iv) If you meet the requirements in paragraph (c) of this section for falconry you may possess up to 3 eagles of the following species: golden eagle, white-tailed eagle, or Steller's sea eagle. (A) Your State, tribal, or territorial agency that regulates falconry must document the following before approving your request to possess an eagle to use in falconry: (1) Your experience in handling large raptors, including information about the species you have handled and the type and duration of the activity in which you gained the experience. (2) At least two letters of reference from people with experience handling and/or flying large raptors such as eagles, ferruginous hawks, goshawks (*Accipiter gentilis*), or great horned owls (*Bubo virginianus*). Each must contain a concise history of the author's experience with large raptors, which can include, but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors. Each letter must also assess your ability to care for eagles and fly them in falconry.*

Abatement Permit. The general qualifications for falconers who want to become state Abatement Permit holders or subpermittees of state Abatement Permit holders will follow the current federal abatement regulations (below):

Federal Regulations, title 50, section 21.29

(f)(11) Using a falconry bird in abatement activities. (i) If you are a Master Falconer, you may conduct abatement activities with a bird or birds you possess for falconry, if you have a Special Purpose Abatement permit. If you are a General Falconer, you may conduct abatement activities only as a subpermittee of the holder of the abatement permit.

- (ii) You may receive payment for providing abatement services if you have a Special Purpose Abatement permit.*

Education Programs. The new federal regulations allow the use of falconry or propagation raptors in education programs and of falconry raptors in educational films under certain prescribed conditions (below). The proposed regulations do not prohibit these uses; however, they may be subject to additional conditions found in other sections of current state regulations. Those activities not specifically prohibited or regulated further in other state regulations will be authorized under these proposed regulations.

Federal Regulations, title 50, section 21.29

(f)(8) Use of falconry raptors in conservation education programs . If you are a General or Master Falconer, you may use a bird you possess in conservation education programs presented in public venues.

- (i) You do not need a Federal education permit to conduct conservation education activities using a falconry raptor held under a State, tribal, or territorial falconry permit.*
- (ii) You may present conservation programs as an Apprentice Falconer if you are under the supervision of a General or Master Falconer when you do so.*
- (iii) You must use the bird primarily for falconry.*
- (iv) You may charge a fee for presentation of a conservation education program. The fee may not exceed the amount required to recoup your costs.*
- (v) In conservation education programs, you must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation. You may not give presentations that do not address falconry and conservation education.*
- (vi) You are responsible for all liability associated with conservation education activities you undertake (see 50 CFR 13.50).*

(f)(9) Other educational uses of falconry raptors . You may allow photography, filming, or other such uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds, though you may not be paid for doing so.

- (i) You may not use falconry raptors to make movies, commercials, or in other commercial ventures that are not related to falconry.*
- (ii) You may not use falconry raptors for commercial entertainment; for advertisements; as a representation of any business, company, corporation, or other organization; or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs, with the following exceptions:
 - (A) You may use a falconry raptor to promote or endorse a nonprofit falconry organization or association.*
 - (B) You may use a falconry raptor to promote or endorse products or endeavors related to falconry, including, but not limited to items such as hoods, telemetry equipment, giant hoods, perches, materials for raptor facilities, falconry training and education materials, and scientific research and publication.**

Federal Regulations, title 50, section 21.30

(n) Conservation education programs. You may use a raptor you possess for raptor propagation in conservation education programs presented in public venues.

- (1) You do not need a Federal education permit to conduct conservation education activities using a propagation raptor.*
- (2) You must use the raptor primarily for propagation.*
- (3) You may charge a fee for presentation of a conservation education program. The fee may not exceed the amount required to recoup your costs.*
- (4) In conservation education programs, you must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation. You may not give presentations that do not address falconry and conservation education.*
- (5) You are responsible for all liability associated with conservation education activities you undertake (see §13.50 of this chapter).*

Rehabilitation. The new federal regulations allow falconers to act as rehabilitators and to allow rehabilitation birds into falconry at the discretion of the commissioner. The proposed regulations

do not prohibit such activity; however, additional permits and regulations found under Minnesota Rules, chapter 6244 govern these activities further.

Federal Regulations, title 50, section 21.29

(e)(7) Acquiring a bird for falconry from a permitted rehabilitator. You may acquire a raptor of any age of a species that you are permitted to possess directly from a rehabilitator. Transfer to you is at the discretion of the rehabilitator.

(i) If you acquire a bird from a rehabilitator, within 10 days of the transaction you must report it by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(ii) If you acquire a bird from a rehabilitator, it will count as one of the raptors you are allowed to take from the wild that year.

(f)(10) Assisting in rehabilitation of raptors to prepare them for release . If your State, tribe, or territory allows you to do so, and if you are a General or Master Falconer, you may assist a permitted migratory bird rehabilitator to condition raptors in preparation for their release to the wild. You may keep a bird you are helping to rehabilitate in your facilities.

(i) The rehabilitator must provide you with a letter or form that identifies the bird and explains that you are assisting in its rehabilitation.

(ii) You do not need to meet the rehabilitator facility standards. You need only meet the facility standards in this section; your facilities are not subject to inspection for compliance with the standards in §21.31.

(iii) You do not have to add any raptor you possess for this purpose to your falconry permit; it will remain under the permit of the rehabilitator.

(iv) You must return any such bird that cannot be permanently released to the wild to the rehabilitator for placement within the 180–day timeframe in which the rehabilitator is authorized to possess the bird, unless the issuing office authorizes you to retain the bird for longer than 180 days.

(v) Upon coordination with the rehabilitator, you must release all releaseable raptors to the wild or return them to the rehabilitator for release within the 180–day timeframe in which the rehabilitator is authorized to possess the birds, unless the issuing office authorizes you to retain and condition a bird for longer than 180 days, or unless the rehabilitator transfers the bird to you to hold under your falconry permit.

6238.1350 PERMIT CLASSES.

Unlike most forms of hunting, the sport of falconry is not just about capturing prey. In order to participate in the sport of falconry, a falconer must learn how to maintain, train, fly, and hunt their raptors. They should also learn how to capture and release wild raptors.

The training and care of each species of raptor is different due to different behavioral and dietary requirements. Some raptors are solitary hunters, others are group hunters. Some raptors hunt rabbits, others squirrels or birds or even fish. Some raptors are very tolerant of extremes in temperature, others prefer cool climates, and still others have no tolerance for cold Minnesota weather.

Eyases, birds taken from the nest, require more training than passage raptors, birds taken after they've fledged or left the nest. Whether taken as an eyas or as a passage raptor these are always wild predators and must be respected as such with their powerful talons and sharp beaks, and they should not be treated as though they are pets. Hand raising a raptor causes it to “imprint” and identify itself with humans rather than its own species. An imprinted raptor cannot be released to the wild and may attack other humans like it would other raptors in the wild.

During the hunting season, raptors must be slightly hungry to encourage them to want to hunt for food, otherwise they have no incentive to make the effort to find food; however, it is a fine line between a little hungry and starvation, so raptors must be weighed daily (the smaller the raptor, the smaller the acceptable weight range). Falconers must also feed their raptors appropriate food, which cannot be purchased from the local grocery store. The food (wild game such as rabbits, squirrel, or quail) must be hunted and stored, bred and raised, or purchased through specialty stores or other falconers.

Additionally, raptors should have water, but generally derive most of their water from their prey, so extra steps must be taken to ensure hydration (wetting carcasses). Raptors must be exercised regularly (flown) to keep them in hunting shape. They also require proper foot, feather, and beak care. They should also be seen by an avian veterinarian regularly.

With all of these considerations current state regulations and federal regulations use the Apprentice, General, and Master classes to differentiate between the levels of proficiency in falconry. Because the USFWS now allows children as young as 12 years old to become falconers, the Junior Apprentice Class was created in the proposed regulations. Propagator and Abatement were also added as permit classes in this section. Additionally, the proposed language for permit classes was modified for clarity, updated to reflect federal regulations, and modified at the request of the falconry community.

Junior Apprentice and Apprentice Classes. In the current state regulations and under the revised federal regulations, all falconers new to the sport of falconry start as apprentices. However, to address concerns expressed by Minnesota falconers regarding the lowered age requirements under federal regulations, the proposed Minnesota rules include a new, Junior Apprentice Class Permit. The Junior Apprentice Class was created for children between the ages of 12 and 16 years old as a way to promote youth participation in the sport of falconry, while ensuring the safety of these young falconers and the health and well-being of their raptors. The restrictions for Apprentices and Junior Apprentices are identical except the Junior Apprentice Class requires more parental participation. The proposed regulations under the Junior Apprentice Class require parental or adult participation by:

1. Requiring parents or legal guardians to sign the application, and they must agree to take legal responsibility for the activities of their child (this is a federal requirement for all falconers under the age of 18); and
2. Requiring that the child's raptor must be housed at the legal residence or raptor facilities of an adult, preferably a parent or legal guardian, who is in possession of a valid Falconry Permit. If the adult Falconry Permittee is an Apprentice, only one raptor is allowed under either the Junior Apprentice Permit or the adult's permit unless it is housed with the sponsor. This requirement encourages parents to become falconers too, or at a minimum, a greater level of participation by the sponsor or another adult falconer.

At the age of 16, a Junior Apprentice Class Falconer becomes an Apprentice Class Falconer. Additionally, all other persons who are new to falconry and over the age of 16 are placed in the Apprentice Class. Restriction (2) above is not required for Apprentice Class Falconers; however, both classes of apprentice must always have a sponsor, who is a Master or a General Falconer with

at least two seasons of experience hunting with their own raptors (required in federal regulations). The requirement for General Falconers to have two seasons of experience prior to becoming sponsors was endorsed by Minnesota falconers, some of whom were introduced to falconry under inexperienced sponsors, and learned poor techniques, which necessitated relearning the proper techniques from others who were more experienced.

Federal Regulations, title 50, section 21.29

(c)(2)(C) You must have a letter from a Master Falconer or a General Falconer with a valid State, tribal, or territorial falconry permit who is at least 18 years old and has at least 2 years experience at the General Falconer level, stating that he or she will assist you, as necessary, in:

- (1) Learning about the husbandry and training of raptors held for falconry;*
- (2) Learning and about relevant wildlife laws and regulations, and*
- (3) Deciding what species of raptor is appropriate for you to possess while an Apprentice.*

Sponsors are encouraged to train their apprentices in the techniques required to capture and release wild raptors, but it is no longer a requirement in federal regulations or in the proposed state regulations. Falconers were concerned that capturing wild raptors is an art that may be lost, but keeping it mandatory may exclude those with disabilities.

Federal Regulations, title 50, section 21.29

(c)(2)(i)(G) You do not need to capture a wild raptor yourself; it can be transferred to you by another falconry permittee.

Federal regulations allow new residents of the United States to become falconers:

Federal Regulations, title 50, section 21.29

(c)(5) Permit to practice falconry at an appropriate level if you have experience in falconry but are a new resident in the United States. You may qualify for the falconry permit appropriate for your experience. To demonstrate your knowledge of U.S. falconry laws and regulations, you must correctly answer at least 80 percent of the questions on the supervised examination for falconers administered by the State, tribe, or territory under which you wish to obtain a falconry permit. If you pass the test, the State, tribe, or territory will decide for which level of falconry permit you are qualified, consistent with the class requirements in paragraph (c)(2) of this section. To do so, the State, tribe, or territory should base its decision on your documentation of your experience. Your falconry facilities must meet the standards in paragraph (d)(1) of this section before you may keep a raptor to use in falconry.

In accordance with this provision, the proposed Minnesota regulations require that falconers who are new residents of the United States must fly their own raptors with a sponsor, under an Apprentice Permit, for at least four months in order to determine their level of proficiency (the standards in other countries may differ from the those in Minnesota) and to familiarize them with Minnesota's falconry regulations, particularly regarding the take of wild raptors. If warranted, they then may move up to their appropriate level of experience with the approval of their sponsor and documentation from their previous country of residence.

In the proposed regulations, both classes of apprentice are initially restricted to the red tailed hawk. The species restriction was requested by falconers due to the ease with which red tailed hawks transition into falconry compared to most other species, its large weight range tolerance, and abundant population. Previously the American kestrel was also allowed for Apprentices, but, at the request of falconers, the American kestrel was removed as an option for Apprentices because it is a more difficult bird to train, has a very narrow weight range (it is a small bird and male kestrels

are even smaller), and their population has been in decline. The species restriction is removed for Apprentices who have gained a minimum of two seasons of experience (the seasons of experience combine experience gained as a Junior Apprentice and/or as an Apprentice). Easing this restriction for Apprentices who have had at least two seasons of experience addressed a concern raised by some falconers that persons starting as Junior Apprentices would otherwise be unnecessarily restricted to one species for up to six seasons (from age 12 until they could become a General Falconer at age 18), and they could potentially benefit from the experience of handling other species. Consequently, the proposed regulations allow an Apprentice with a minimum of two seasons of experience, with approval from their sponsor, to take and possess any raptor allowed under the proposed state regulations and allowed for an Apprentice Class Falconer under federal regulations. Federal regulations allow the option to possess other species as an Apprentice Class Falconer (other species are more abundant in other states, so species restrictions in federal regulations would have been problematic).

Federal Regulations, title 50, section 21.29

(c)(2)(i)(E) You may take raptors less than 1 year old, except nestlings, from the wild during any period or periods specified by the State, tribe, or territory. You may take any raptor species from the wild except a federally listed threatened or endangered species or the following species: Bald eagle (Haliaeetus leucocephalus), white-tailed eagle (Haliaeetus albicilla), Steller's sea-eagle (Haliaeetus pelagicus), golden eagle (Aquila chrysaetos), American swallow-tailed kite (Elanoides forficatus), Swainson's hawk (Buteo swainsoni), peregrine falcon (Falco peregrinus), flammulated owl (Otus flammeolus), elf owl (Micrathene whitneyi), and short-eared owl (Asio flammeus).

(c)(2)(i)(F) You may possess a raptor of any Falconiform or Strigiform species, including wild, captive-bred, or hybrid individuals, except a federally listed threatened or endangered species, a bald eagle (Haliaeetus leucocephalus), a white-tailed eagle (Haliaeetus albicilla), a Steller's sea-eagle (Haliaeetus pelagicus), or a golden eagle (Aquila chrysaetos).

In the proposed regulations, both classes of apprentice are allowed to possess only one raptor at a time, and they are allowed to take two raptors from the wild in a season. These regulations follow the revised federal regulations, which is a change from current state regulations (currently, Apprentices may not obtain more than one raptor for replacement during any 12-month period). When hunting with falconry raptors, the raptor often “escapes” by not returning to the falconer. This is especially true for Apprentice Falconers, so the rule revision will allow them to take a second raptor for replacement to continue training.

Federal Regulations, title 50, section 21.29

(e)(2) How and when you may take raptors from the wild to use in falconry. You may take no more than two raptors from the wild each year to use in falconry.

All other requirements in both classes of apprentice mirror federal regulations:

Federal Regulations, title 50, section 21.29

(c)(2)(i)(D) Regardless of the number of State, tribal, or territorial falconry permits you have, you may possess no more than one raptor for use in falconry.

(c)(2)(i)(E) You may take raptors less than 1 year old, except nestlings, from the wild during any period or periods specified by the State, tribe, or territory.

(c)(2)(i)(H) You may not possess a raptor taken from the wild as a nestling.

(c)(2)(i)(I) You may not possess a bird that is imprinted on humans.

General Permit Class. Current state falconry regulations require a falconer to be at least 18 years old before they are eligible to become a General Falconer. The new federal regulations reduced the age requirement for General Falconers by two years to 16, but they still require a legal guardian to sign the application of the juvenile and to take legal responsibility for the activities of the juvenile. The proposed regulations keep the minimum eligible age for a General Falconer in Minnesota at 18 years old because of the increased responsibilities that General Falconers are eligible to perform (General Falconers no longer need a sponsor, may have multiple birds in a wide range of species, may become sponsors after two seasons of experience, may propagate raptors with additional credentials after two seasons of experience, and may work as a sublicensee under an Abatement Permit),

Current state falconry regulations allow General Falconers to possess a maximum of two raptors both of which may be wild caught. Federal regulations now allow a maximum of three raptors, all of which may be wild caught. The proposed regulations maintain the current state maximum allowed possession at two raptors, both of which may be wild caught. The two wild raptor limit was retained so that the proposed regulations would not have an impact on wild raptor populations in the state (representatives from the birding community indicated that increased impacts on wild raptor populations may result in their opposition of the proposed regulations). This is a concern because although many falconers trap and release their birds seasonally, just as many keep their raptors over multiple seasons, they may transfer their raptor out of state, or the raptor may die while in their possession. General Falconers tend to have a higher raptor mortality rate than Apprentice Falconers or Master Falconers. This may be due to the fact that General Falconers are no longer required to have a sponsor watch over them, they may possess any species of raptor allowed under state and federal regulations (as previously noted each species of raptor has its own unique care requirements), and they may have multiple birds which requires more time and effort. General Falconers have a tendency to possess, in rapid succession, as many species of raptor as they are capable of obtaining until they find one or more species of raptor that “fit”. They then almost exclusively possess those species of raptor as a Master Falconer.

Current state falconry regulations require a minimum of two years experience as an Apprentice Class Falconer prior to qualifying for General Class status. Previously this had been interpreted as requiring 24 months experience with a raptor under their possession. The new federal regulations only require 2 years experience with 4 months of possession each year:

Federal Regulations, title 50, section 21.29

(c)(2)(ii)(C) You must submit a document from a General Falconer or Master Falconer (preferably your sponsor) to your State, tribal, or territorial wildlife agency stating that you have practiced falconry with raptor(s) at the Apprentice Falconer level or equivalent for at least 2 years, including maintaining, training, flying, and hunting the raptor(s) for least 4 months in each year. That practice may include capture and release of falconry raptors.

Many falconers, especially, younger falconers wanted the state standards to drop and align more closely with the federal standards. However, because this would be a major departure from current practices and there was concern that standards of falconry knowledge would not be maintained, a compromise was reached through consultation with the falconry community.

A falconry “season” was constructed based on normal falconry practices. The season begins May 1st, just prior to when an eyas (nestling raptor) may be taken, to April 30th of the next year, around the time falconers release their bird prior to molting. Since Apprentice Falconers cannot take an

eyas, they would not be eligible to take a raptor until August when passage raptors may be taken; therefore, a “season of experience” was designated as possession of a raptor for a minimum of six calendar months within a season. An Apprentice Falconer needs a minimum of two seasons of experience to be eligible to progress to General Class Falconer.

All other requirements in the General Class mirror federal regulation restrictions for General Falconers:

Federal Regulations, title 50, section 21.29

(c)(2)(ii)(E) You may take and possess any species of Falconiform or Strigiform except a golden eagle, a bald eagle, a white-tailed eagle, or a Steller's sea-eagle. You may use captive-bred individuals and hybrids of the species you are allowed to possess.

(c)(2)(ii)(D) You may not substitute any falconry school program or education to shorten the period of 2 years at the Apprentice level. (This federal requirement is not explicitly included in the proposed regulations but still applies)

(e)(2) How and when you may take raptors from the wild to use in falconry. You may take no more than two raptors from the wild each year to use in falconry.

Master Permit Class. Similar to changes in experience required to move from Apprentice to General Falconer, the experience required to move from General to Master Falconer was reduced. Current state regulations require a person to be a General Falconer for 5 years (60 months) before being eligible to upgrade to Master Falconer. The proposed regulations will now require a General Falconer to have five “seasons of experience” before being eligible to upgrade to Master Falconer.

Current state falconry regulations allow Master Falconers to possess a maximum of three raptors, all of which may be wild caught. Federal regulations now allow:

Federal Regulations, title 50, section 21.29

(c)(2)(iii)(D) Regardless of the number of State, tribal, or territorial falconry permits you have, you may possess no more than 5 wild raptors, including golden eagles.

(c)(2)(iii)(E) You may possess any number of captive-bred raptors. However, you must train them in the pursuit of wild game and use them in hunting.

The proposed regulations maintain the maximum allowed possession of wild caught raptors at three, but will allow the possession limit to increase to five total raptors (combination of wild caught and captive bred raptors). The three wild raptor limit was retained so that the new regulations would not have an impact on wild populations (representatives from the birding community indicated that increased impacts on wild raptor populations may resulted in their opposition of the proposed regulations). The decision to increase the total possession limit from three to five raptors was at the request of the falconers. An increase to five total birds would allow falconers to possess and fly group hunting birds such as Harris Hawks, while still maintaining the current level of care that an individual permit holder is able to maintain for their birds.

In addition to care and maintenance concerns, the proposed regulations did not expand the allowed possession of captive-bred raptors to the extent allowed under federal regulations (basically unlimited), because even at the current possession limit of three, falconers are often tardy or negligent in submitting their federally required paperwork for bird transfers. By allowing Master

Falconers an unlimited number of propagated raptors, maintaining an accurate accounting of the raptors in their possession would be problematic and time consuming. An accurate accounting is required by federal regulations, otherwise the state may have its falconry program suspended:

Federal Regulations, title 50, section 21.29

(b)(5) Review of a State, tribal, or territorial falconry program. We may review the administration of an approved State's, tribe's, or territory's falconry program if complaints from the public or law enforcement investigations that indicate the need for a review, or revisions to the State's, tribe's, or territory's laws or falconry examination. The review may involve, but is not limited to:

(v) Determining the adequacy of the State's, tribe's, or territory's recordkeeping for the needs of State, tribal, or territorial and Federal law enforcement;

(b)(6) Suspension of a State's, tribe's, or territory's certification. (i) We may propose to suspend, and may suspend the approval of a State, tribal, or territorial falconry program in accordance with the procedures in paragraph (b)(6)(ii) of this section if we determine that the State, tribe, or territory has deficiencies in one or more items in paragraph (b)(5) of this section.

All other requirements in the Master Class mirror federal regulation restrictions for General Falconers:

Federal Regulations, title 50, section 21.29

(c)(2)(iii)(B) You may take and possess any species of Falconiform or Strigiform except a bald eagle. However, you may take and possess a golden eagle, a white-tailed eagle, or a Steller's sea eagle only if you meet the qualifications set forth under paragraph (c)(2)(iv).

(c)(2)(iii)(C) You may possess any captive-bred individuals or hybrids of species your State, tribe, or territory allows you to possess for use in falconry.

(e)(2) How and when you may take raptors from the wild to use in falconry. You may take no more than two raptors from the wild each year to use in falconry.

Propagator Class Permit. Raptor propagators are not required to be falconers, although all currently permitted propagators are falconers except one. Current state regulations impose very strict standards on falconers, but there are very few restrictions placed on propagators, who house the same type of animals and have many of the same practices as falconers. Therefore, where applicable, state falconry standards now apply to raptor propagation in the proposed regulations. The federal regulations were also incorporated into the propagator class restrictions, although there were similar issues in the federal falconry regulations versus the federal raptor propagation regulations. The updated language removes this ambiguity by requiring a minimum of federal falconry standards to also be applied to raptor propagation (where applicable).

In the proposed regulations, two classes of propagator, Standard Propagator and Specialized Propagator, were created to differentiate between an individual who breeds and raises raptors from a large scale propagation operation.

1. **Standard Propagator.** Standard Propagators may possess no more than six raptors under their Propagation Permit (propagators requested that the regulations specify six raptors not three pairs because current practices often make use of artificial insemination). Most propagators are falconers who breed raptors for use in falconry. Under the proposed regulations, an individual would be able to possess six raptors under their Propagation Permit, plus they may propagate the five raptors allowed under their Falconry Permit for up

to eight months in a year without transferring the birds to their Propagation Permit; therefore, a Master Falconer with a Propagation Permit would have eleven birds at their disposal for breeding. Also, falconers often loan their raptors to propagators for breeding (the “loaned” raptor remains on the possession limit of the loaner, not the recipient, provided the exchange is concluded within 120 days). Not all birds are compatible or breed easily, so propagators need the flexibility of several birds to choose from in their breeding program.

When raptors hatched under a Standard Propagation Permit reach the age of one year old, they must be: 1) included under the Propagation Permit, 2) transferred to the permittee’s Falconry Permit, or 3) transferred to someone else (sale or gift). The need to transfer the raptors at one year of age was based on federal regulations (below), which state that captive offspring may be flown for training up to a year, and propagation birds may not be used in hunting.

Federal Regulations, title 50, section 21.30

(o) Permit restrictions. With limited exceptions, you may use raptors held under your captive propagation permit only for propagation or keep them to transfer or sell. You must transfer a raptor used in captive propagation to a falconry permit before you or another person may use it in falconry. If you transfer a raptor used in captive propagation to another permit, you and the recipient of the raptor (which might be you) must complete an FWS Form 3–186A and report the transfer. You do not need to transfer a bird from your falconry permit (if you hold one) if you use the bird for fewer than 8 months in a year in captive propagation, but you must do so if you permanently transfer the bird for propagation. The bird must then be banded as required in paragraph (e).

(p) Training propagation raptors. You may use falconry training or conditioning practices such as, but not limited to, creance (tethered) flying, lures, balloons, or kites in training or conditioning captive-bred progeny of raptors you hold under your permit.

(1) Until the raptors are 1 year old, you may use captive-bred offspring in actual hunting as a means of training them. To do so, you will not need to transfer them to another permit type. You may not use them in hunting after their first year if they are held under your captive propagation permit.

(2) Any hybrid raptor that you fly free must have at least two attached radio transmitters to help you to locate the bird.

(3) You may not hunt at any time with raptors you use in propagation.

2. **Specialized Propagator.** Specialized Propagators may possess more than six propagation raptors. The classification was created for large propagation facilities with a specialized purpose such as education, business, reintroduction, research, abatement, etc., and somewhat emulates game farm regulations. The proposed propagation regulations are meant to ensure that someone who wishes to breed raptors on a large scale is able to do so in a humane and healthy manner. A Specialized Propagator will need to submit a proposal or business plan that outlines the number and type of raptors to be propagated, facility schematics adequate to house those raptors, number of assistants that are necessary to care for the raptors, and other necessary requirements.

Currently no permitted propagator in Minnesota has more than six raptors, however, there have been propagators with more than six in the past, and several falconers have expressed an interest in creating larger breeding facilities. Other states, like South Dakota and Iowa, are home to large raptor breeding facilities containing over 100 birds.

Under the proposed regulations, which are based on federal regulations (below), propagators will be allowed to take passage raptors from the wild to use directly for propagation. Previously, propagators could only receive their raptors through transfers from other permit types. Master and General Falconers who are propagators would be allowed to take a total of two birds from the wild between their Falconry and Propagation permits. If this permission is not allowed, under federal regulations, a raptor would have to be taken under a Falconry Permit, and then could not be transferred to a Propagation Permit for two years without veterinarian's or rehabilitator's permission. Only passage raptors may be taken under a Propagation Permit. Federal regulations allow wild raptor eggs to be taken for propagation, but such take in Minnesota would require expanding the eyas take time period earlier (see the line-by-line analysis for part 6238.1400 starting on page 45 for an explanation of take time periods).

Federal Regulations, title 50, section 21.30

(f) Taking and transferring raptors or raptor eggs from the wild to use in propagation. You may take no more than two raptors or raptor eggs from the wild each year to use in propagation.

Federal Regulations, title 50, section 21.29

(f)(5) Transfer of wild-caught raptors captured for falconry to another type of permit. Under some circumstances you may transfer a raptor to another permit type if the recipient of the bird (which could be you) possesses the necessary permits for the other activity.

(i) If your State, tribe, or territory allows you to do so, you may transfer a wild-caught falconry bird to a raptor propagation permit after the bird has been used in falconry for at least 2 years (1 year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel). When you transfer the bird, you must provide a copy of the 3-186A form documenting acquisition of the bird by the propagator to the Federal migratory bird permit office that administers the propagation permit.

(ii) You may transfer a wild-caught bird to another permit type in less than 2 years (1 year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel) if the bird has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the bird can no longer be flown for falconry.

(A) Within 10 days of transferring the bird, you must provide a copy of the 3-186A form documenting acquisition of the bird to the Federal migratory bird permit office that administers the other permit type.

(B) When you transfer the bird, you must provide a copy of the certification from the veterinarian or rehabilitator that the bird is not useable in falconry to the Federal migratory bird permits office that administers the other permit type.

Under the current regulations, there are no restrictions on the number of wild caught raptors that a propagator may possess under their Propagation Permit. The proposed regulations would limit propagators to six wild caught birds, and limit falconers with Propagation Permits to a total of six wild caught birds between their two permits. The restriction allows gene flow into the propagation program through introduction of wild raptors, but prevents the propagation program, especially in the event of large facilities, from removing large quantities of wild breeding stock from the natural population, which could eventually reduce wild raptor populations.

An annual report is currently required under state and federal regulations. This will not change under the proposed regulations because the annual report is the way propagators inform the agencies that new raptors have been produced (they do not need to submit a raptor reporting form until the raptor is transferred to another permit type or permittee).

Federal Regulations, title 50, section 21.30

(h) (1) You do not have to submit or have a copy of an FWS Form 3–186A for raptors you produce by captive propagation if you keep the raptors in your possession under your propagation permit.

(t) Annual report. You must submit a completed FWS Form 3–202–8 to your Regional Migratory Bird Permit office by January 31 each year for January 1 through December 31 of the preceding year.

The following federal requirement is not explicitly included in the proposed regulations but still applies:

Federal Regulations, title 50, section 21.30

(u) Endangered or threatened species. If you wish to propagate endangered or threatened species, you must have at least 2 years of experience handling raptors in a propagation program or programs. You may also need an endangered species permit to propagate threatened or endangered raptors. See §§17.21 and 17.22 of this chapter for permit requirements to propagate threatened or endangered raptors.

Abatement Class Permit. Abatement Permittees must follow all applicable regulations in this chapter of the state regulations along with the applicable federal falconry standards that may be cited in the chapter. There currently are not any specific federal abatement regulations (except those cited on page 32 of this SONAR which are found in the federal falconry regulations). Federal Abatement Permits are issued as Special Purpose Permits under Code of Federal Regulations, title 50, section 21.27. The policies governing the Abatement Permits are covered under an August 22, 2007 Migratory Bird Permit Memorandum and a factsheet provided with the application. The proposed Abatement Permit requirements and restrictions are either current abatement policy or are policies that align with the unpublished draft of the federal abatement regulations that will potentially be regulated under Code of Federal Regulations, title 50, section 21.33.

Allowances for subpermittees under an Abatement Permit were taken from federal falconry regulations:

Federal Regulations, title 50, section 21.29

(f)(11) Using a falconry bird in abatement activities. (i) If you are a Master Falconer, you may conduct abatement activities with a bird or birds you possess for falconry, if you have a Special Purpose Abatement permit. If you are a General Falconer, you may conduct abatement activities only as a subpermittee of the holder of the abatement permit.

(ii) You may receive payment for providing abatement services if you have a Special Purpose Abatement permit.

The revised federal falconry regulations are more restrictive in this regard than the 2007 abatement memo (the draft language of the revised federal abatement regulations may change this back to allow Apprentice Falconers to become subpermittees).

August 22, 2007, Migratory Bird Permit Memorandum

Master, General, or Apprentice Class Falconers may be subpermittees on an SPA (Special Purpose Abatement) permit and may conduct all abatement activities. All other individuals may provide care for raptors held under the SPA permit (and must be identified as a subpermittee if they will be doing so) but they may not fly the raptors. For individuals who held a special purpose permit for

abatement at the time this memorandum is finalized, we will consider exceptions to the requirement that subpermittees hold a falconry permit in order to fly birds.

Restricting Abatement Subpermittees to General and Master Falconers is a safety consideration for the general public. Apprentice Falconers may not have enough experience to safely handle their raptors in public settings. The public should be able to assume that the person conducting the activities, as a paid professional, can undertake the task safely. The Abatement Permit holder will be responsible for the conduct of their subpermittees while conducting abatement activities.

Federal abatement policy restricts raptors used in abatement activities to captive bred birds. The stated reason is, “using wild-caught raptors in commercial activities could conflict with the intent of Congress to protect wild populations of birds from commercial exploitation.” Additionally, eagles may not be used in abatement activities per the Bald and Golden Eagle Protection Act.

August 22, 2007, Migratory Bird Permit Memorandum

Raptors used for abatement must be captive-bred and banded with a seamless band issued by the Service. They must be housed and maintained in accordance with the federal falconry regulations.

Any raptor species that may be used for falconry can be used for abatement, with the exception of Bald and Golden Eagles. The use of eagles for abatement is prohibited by the Bald and Golden Eagle Protection Act. Hybrid raptors can only be used if they are fitted with two radio transmitters so they can be tracked and recovered if they are lost.

The requirement that Abatement Permittees and their subpermittees carry a copy of their abatement permit while conducting abatement activities is a standard permit requirement.

Current federal abatement policy allows federal Abatement Permittees to possess an unlimited number of raptors to be used solely for abatement in addition to a person’s falconry raptors. Federal abatement policy allows falconry raptors to be used in abatement activities, but abatement birds may not be used for falconry. Because the birds under a separate Abatement Permit would require additional reporting whenever a permittee wanted to fly them for falconry, the proposed regulations would instead allow the Abatement Permittee to possess additional captive bred raptors under their Falconry Permit. This way the administrative costs and time of running the abatement program would be minimal for the state, and Abatement Permittees would benefit because they would be allowed to possess an increased number of raptors with minimal paperwork. The proposed regulations would support the federal position that multiple raptors, beyond what is normally possessed for falconry (this position was held in the recent draft of the federal abatement regulations even though federal regulations allow Master Falconers an unlimited number of captive bred birds), may be necessary to complete large abatement jobs, while ensuring that there are enough raptors to act as a reserve for rest and rotation.

However, the federal position that this necessitates a separate group of raptors to ensure adequate care is not supported (a position also held in the recent draft of the federal abatement regulations). Under the proposed regulations, Abatement Permittees who want to possess additional captive bred raptors to use in abatement (beyond the five that they will be permitted on their standard Falconry Permit) will have the same requirements that have been proposed for large scale propagation facilities. Again, the requirements somewhat emulate game farm regulations, and they are meant to ensure that someone who wishes to possess raptors on a large scale is able to do so in a humane and healthy manner. An Abatement Permittee who wishes to possess more raptors beyond their standard five under their Falconry Permit will need to submit a proposal or business

plan that outlines the number and type of raptors to be propagated, facility schematics adequate to house those raptors, number of assistants that are necessary to care for the raptors (these assistants are listed as subpermittees under the federal abatement policies and do not have to be falconers; however, they may not fly the birds or perform abatement activities with the birds), and other necessary requirements.

August 22, 2007, Migratory Bird Permit Memorandum

We will authorize for possession and use under the SPA (Special Purpose Abatement) permit the species of raptors the applicant states he or she will use to perform abatement work.

If a practicing falconer obtains an SPA permit, he or she may use birds possessed under his/her falconry permit for abatement without transferring them to the SPA permit. However, raptors held under an SPA permit may not be used for falconry (i.e., hunting quarry for sport) without the SPA permit holder first transferring the birds to a falconry permit. Wild-caught raptors used for falconry may not be used for abatement.

Acquisition and disposition of a raptor under an SPA permit must be reported by submitting Service form 3-186A (Migratory Bird Acquisition and Disposition Report) that is completed in accordance with the instructions on the form and filed by the sender and the recipient.

The Abatement Permittee will be required to submit an annual report of abatement activities for the year.

6238.1400 RESTRICTIONS ON TAKING RAPTORS.

The revised federal regulations have numerous restrictions on raptor take. Interpretations of these mandates and language to enforce the application of these restrictions have been included in the proposed regulations, as well as additional restrictions specific to the state of Minnesota.

Prevention of wild raptor population depletion. The proposed regulations include conditions to prevent the depletion of wild raptor populations. These conditions include: limits on the number of raptors that may be taken; restrictions on species of raptors that may be taken; limits on the geographical area where raptors may be taken; and restrictions on when raptors may be taken. The conditions were only applied to the Raptor Permits (now Nonresident Take Permits) in the current regulations, but will be applied to all permits (Nonresident, Propagation, and Falconry) in the proposed regulations. Authority for including these conditions arise from the commissioner's general powers and duties:

Minnesota Statutes, section 97A.045

Subd. 2. Power to protect wild animals.

(a) The commissioner may protect a species of wild animal in addition to the protection provided by the game and fish laws, by further limiting or closing seasons or areas of the state, or by reducing limits in areas of the state, if the commissioner determines the action is necessary to prevent unnecessary depletion or extinction, or to promote the propagation and reproduction of the animal.

These restrictions may be applied to:

1. **At risk species.** Permits for species that are at risk of depletion such as those identified in the state wildlife action plan (http://files.dnr.state.mn.us/assistance/nrplanning/bigpicture/cwcs/tomorrows_habitat_overview.pdf), are listed as species of "special concern" in Minnesota Rules, part 6134, and species subject to the following federal requirement:

Federal Regulations, title 50, section 21.29

(e)(4) Take of a species or subspecies that was recently removed from the Federal List of Endangered and Threatened Wildlife to use in falconry. We must first publish a management plan for the species. If take is allowed in the management plan, you may do so in accordance with the provisions for take in the plan.

2. **Threatened or endangered species.** Falconry Permits to restrict the number of peregrine falcons or other threatened (or endangered) species that may be taken. The proposed conditions eliminate the need for the following restriction in current regulations:

Minnesota Rules, part 6238.0400

*Subpart 9. **Peregrine falcon restrictions.** If the peregrine falcon is removed from listing in part 6134.0200, subpart 2, the commissioner may limit the number of this species that may be taken each year to prevent population depletion. These limits must be based on estimated population size and expected hatch and may be applied to a specific geographical area. A falconry or raptor permit may include conditions that specify where and when peregrine falcons may be taken.*

Allowed peregrine take is currently set by the Mississippi Flyway Council; Minnesota's allowed take has been one per year, but may be revised to two for the 2013 season. The take is offered to Master Falconers through a lottery.

3. **Nonresident Take Permits.** Nonresident Take Permits to restrict the number of wild Minnesota raptors removed from the state, either by direct nonresident take or through transfers of raptors taken by residents and then transferred to nonresidents. This will protect wild raptor populations in jeopardy from depletion. Resident falconers may still be able to take raptors from the depleted species under certain prescribed restrictions (similar to the peregrine lottery).
4. **Time of year (age of take).** For example, limits may be placed on early spring take (young birds still in the nest) for certain species, while the take of passage raptors (free flying birds under a year old, but out of the nest) of the same species in the fall may remain unrestricted. This would be warranted because eyas take can be disruptive to the nesting efforts of the parent birds and lead to nest failure (parents abandoning nests). Since passage raptors are already fledged, the vulnerable nesting period is no longer of concern, plus passage birds are often raptors migrating through the state originating elsewhere, so their take does not affect Minnesota raptor populations.

Trapping. At the request of falconers, trapping methodology was expanded in the proposed regulations to include traps that entirely encapsulate the raptor and are monitored daily, not continuously as in the current regulations. The change would allow falconers and propagators to use common, humane trapping devices such as the Swedish goshawk trap. Falconry traps are intended to be visible from the air by raptors and to result in live capture; therefore, regulations for "trapping" raptors are complete in this section, and supersede "trapping" listed under Minnesota Rules, part 6234.2200. The falconry permit and apprenticeship program are intended to be the complete requirements necessary for taking raptors (additional trapper education certifications and licenses are not necessary for taking a raptor).

Federal regulations require that if a falconer causes a raptor to be injured, they must take that bird to a veterinarian or rehabilitator, but federal regulations do not require that the injury be reported. The proposed regulations require that raptor injuries incurred during trapping must be reported.

Tracking this information is important to determine whether certain individuals or trapping methods need further review. Raptor injuries during trapping are not frequent.

Federal Regulations, title 50, section 21.29

(e)(5) Raptors injured due to falconer trapping efforts. You have two options for dealing with a bird injured by your trapping efforts. In either case, you are responsible for the costs of care and rehabilitation of the bird.

(i) You may put the bird on your falconry permit. You must report take of the bird by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry at your first opportunity to do so, but no more than 10 days after capture of the bird. You must then have the bird treated by a veterinarian or a permitted wildlife rehabilitator. The bird will count against your possession limit.

(ii) You may give the bird directly to a veterinarian, or a permitted wildlife rehabilitator, or an appropriate wildlife agency employee. If you do so, it will not count against your allowed take or the number of raptors you may possess.

Trespass. Language has been added into the proposed regulations that explicitly state that Falconry, Nonresident Take, and Propagation permits do not give the holder the right to trespass onto property they do not own in order to take a raptor, and they must get permission from the landowner or land manager. This is not a change to current regulations and has comparable language within federal regulations.

Federal Regulations, title 50, section 21.29

(f)(16) Permission to capture, fly, or release a falconry bird at any location. You do not need special or written permission for any of these activities on public lands if it is authorized. However, you must comply with all applicable Federal, State, tribal, or territorial laws regarding falconry activities, including hunting. Your falconry permit does not authorize you to capture or release raptors or practice falconry on public lands if it is prohibited on those lands, or on private property, without permission from the landowner or custodian.

Several falconers wanted a revision in this section that would authorize permission for raptor take on State land; however, the intent of this section of the proposed regulations is a warning against trespass—not a restriction or a permission. Other statutes and regulations, which are not affected by the proposed rule revision, govern the restrictions and permissions for the various types of state land (each site may be further restricted due to specific management issues). “Take of a raptor,” although similar in methodology to “trapping” used for game animals, is not authorized under the game trapping statutes and regulations; therefore, falconers should not assume that because trapping of game animals is allowed on a state property that taking raptors is also allowed. They need to gain permission to take raptors on the individual state properties.

Reporting. Federal regulations are very explicit on who should report a raptor take depending on the scenario under which the raptor was taken. The proposed regulations defer to federal regulations on who should report the take and whose take limit the raptor will count towards:

Federal Regulations, title 50, section 21.29

(e)(2) How and when you may take raptors from the wild to use in falconry. You may take no more than two raptors from the wild each year to use in falconry.

(i) If you transfer a bird you take from the wild to another permittee in the same year in which you capture it, the bird will count as one of the raptors you are allowed to take from the wild

that year; it will not count as a capture by the recipient, though it will always be considered a wild bird.

(e)(2)(v) If you are present at the capture site, even if another person captures the bird for you, you are considered the person who removes the bird from the wild. You are responsible for filing a 3-186A form reporting take of the bird from the wild. This would occur, for example, if another person climbs a tree or rappells down a cliff and takes a nestling for you and gives it to you at the tree or cliff.

(e)(2)(vi) If you are not at the immediate location where the bird is taken from the wild, the person who removes the bird from the wild must be a General or Master Falconer, and must report take of the bird. If that person then transfers the bird to you, you must both file 3-186A forms reporting the transaction at your first opportunity to do so, but no later than 10 days after the transfer. The bird will count as one of the two raptors the person who took it from the wild is allowed to capture in any year. The bird will not count as a bird you took from the wild. The person who takes the bird from the wild must report the take even if he or she promptly transfers the bird to you.

(e)(2)(vii) If you have a long-term or permanent physical impairment that prevents you from attending the capture of a species you can use for falconry, a General or Master Falconer may capture a bird for you. You are then responsible for filing a 3-186A form reporting take of the bird from the wild, and the bird will count against the take of wild raptors that you are allowed in any year.

(f)(5) Transfer of wild-caught raptors captured for falconry to another type of permit. Under some circumstances you may transfer a raptor to another permit type if the recipient of the bird (which could be you) possesses the necessary permits for the other activity.

(i) If your State, tribe, or territory allows you to do so, you may transfer a wild-caught falconry bird to a raptor propagation permit after the bird has been used in falconry for at least 2 years (1 year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel). When you transfer the bird, you must provide a copy of the 3-186A form documenting acquisition of the bird by the propagator to the Federal migratory bird permit office that administers the propagation permit.

(ii) You may transfer a wild-caught bird to another permit type in less than 2 years (1 year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel) if the bird has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the bird can no longer be flown for falconry.

(A) Within 10 days of transferring the bird, you must provide a copy of the 3-186A form documenting acquisition of the bird to the Federal migratory bird permit office that administers the other permit type.

(B) When you transfer the bird, you must provide a copy of the certification from the veterinarian or rehabilitator that the bird is not useable in falconry to the Federal migratory bird permits office that administers the other permit type.

Wild raptors. The proposed regulations have updated language to clarify that wild raptors may not be purchased, sold, traded, or bartered. They may only be transferred or released. Several falconers took issue with the proposed language because they felt that the bird is their property once it is removed from the wild population, but the federal language is explicit in this regard:

Federal Regulations, title 50, section 21.29

(f) Additional information on the practice of falconry —(1) Raptors removed from the wild for falconry are always considered “wild” raptors. No matter how long such a bird is held in captivity or whether it is transferred to another permittee or permit type, it is always considered a “wild” bird. However, it is considered to be taken from the wild only by the person who originally

captured it. We do not consider the raptor to be taken from the wild by any subsequent permittee to whom it is legally transferred.

(ii) You may not purchase, sell, trade, or barter wild raptors. You may only transfer them.

(f)(4) Selling or trading raptors under a falconry permit. (i) If allowed by your State, tribe or territory, you may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands to other permittees who are authorized to possess them.

(ii) You may not purchase, sell, trade, or barter wild raptors. You may only transfer them.

Federal Regulations, title 50, section 21.30

(g) Transfer, purchase, sale, or barter of captive-bred raptors, eggs, or semen.

(1) You may transfer, sell, or barter a lawfully possessed captive-bred raptor to another person authorized to possess captive-bred raptors if the raptor is marked on the metatarsus by a seamless, numbered band that we provide.

(2) You may transfer, sell, or barter a lawfully possessed raptor egg or raptor semen produced by a raptor held under your captive propagation permit (including a raptor taken from the wild) to another raptor propagation permittee.

(3) You may not purchase, sell, or barter any raptor eggs or any raptors taken from the wild in the United States or its territories or possessions, any semen collected from a raptor in the wild in the United States or its territories or possessions, or any raptor hatched from eggs taken from the wild in the United States or its territories or possessions.

There are also direct parallels with regard to ownership of wild animals in Minnesota state statutes as well:

Minnesota Statutes, section 97A.025 OWNERSHIP OF WILD ANIMALS.

The ownership of wild animals of the state is in the state, in its sovereign capacity for the benefit of all the people of the state. A person may not acquire a property right in wild animals, or destroy them, unless authorized under the game and fish laws, sections 84.091 to 84.15, or sections 17.47 to 17.498.

Time periods. The time periods for eyas (nestling) take and passage raptor (a juvenile raptor under a year old that has left the nest and is capable of flight) take have been extended in the proposed regulations. Under the federal regulations, states must determine the appropriate take time period and duration suitable for their state:

1. **Eyases.** Current regulations allow eyases to be taken from May 27 to July 14 by General and Master Falconers (federal regulations explicitly exclude Apprentice Falconers from taking eyases). Falconers requested an extension of that interval, so after deliberation the period for eyas take was extended under the proposed regulations (from July 14 to July 31). Raptor nests are most vulnerable to nest failure (parents abandoning their nest) in the early stages of nesting (nest building, egg laying, and newly hatched chicks). Early nest scouting and early eyas take by falconers or propagators may disrupt the parents' nesting activities enough that they abandon the site. Expanding early raptor take could be detrimental to raptor populations. Additionally, the very large Minnesota birding community would take issue with earlier take in general and especially when applied to the Northern Goshawk.

Raptor parents are more committed to nests and nestlings as the breeding season progresses, so delaying the season close would have little impact. According to knowledgeable DNR nongame field staff, falconers should be able to take an eyas or two from a nest without causing the parents to abandon their nest and remaining eyases. Falconers may take a

maximum of two eyases per year, but they must ensure that at least one eyas remains in a given nest (federal regulations). The extension of the eyas take period to July 31, allows falconers to take older eyases that are moving out of the nest (branching), but are not yet fully fledged. According to falconers, raptors at this age are very receptive to falconry training techniques, but are less likely to imprint.

2. **Passage Raptors.** Current regulations allow passage raptors to be taken from August 21 to December 29. At the request of the falconers, the duration for passage raptor take was extended from December 29 to February 28 to coincide with the end of the small game season. Falconers were concerned that the current close date, which was based on the old federal regulations, did not allow them to replace an escaped bird in the middle of small game season. The revised federal regulations do not specify time periods for taking birds; it is up to each individual state. Raptors do not begin nesting until later in the spring, so extending the closing date until the end of small game season, February 28, should have little effect on current raptor populations. Plus under the current closing date, cold tolerant gyrfalcons, which do not move through the state until late in the season, would be available for falconers to take. Beyond February 28, falconers can no longer hunt with their birds, and the wild birds start pairing up for the breeding season, so ending passage raptor take on that date is a reasonable compromise.

The current August 21 start date for taking passage raptors was retained in the proposed regulations because most passage raptors are caught during their fall migration which peaks after that date. In the fall, large numbers of raptors migrate through Minnesota, many originating from Canada, so the chances of raptor take increases. Also, because the Minnesota raptor population is enhanced with these migrant birds, passage raptor take has a minimal affect on native raptor populations. The August 21 start date allows falconers enough time to take and start to train a raptor prior to the start of the small game season in September (falconers must have a small game license, duck stamps, etc. in order to take game with their raptor).

6238.1450 RESTRICTIONS ON IMPORTING RAPTORS INTO MINNESOTA.

There are restrictions on importing raptors to the United States within the federal regulations, but they leave restrictions for import and export of species between states at the discretion of each state.

Native Raptors. For raptors that are native to Minnesota (some portion of their lifecycle naturally occurs in Minnesota), a permittee will only have to report the possession as they do for any other acquisition; however, to import any bird into the state, they must obtain a Minnesota Board of Health Certification from a veterinarian. That certification should be included with their acquisition notification. The certification is required to prevent the spread of avian diseases, such as Exotic Newcastle Disease, which can have devastating effects on wild populations and the poultry industry (Minnesota Rules, part 1700.4200).

Hybrid and non-native raptors. For hybrid and non-native raptors, a permittee must notify the commissioner 10 days prior to obtaining the hybrid or non-native raptor, they must obtain a Minnesota Board of Health Certification from a veterinarian to import the raptor into Minnesota, and then they must submit the standard acquisitions form along with the health certificate. The notification requirement for hybrid and non-native raptors is a protection for the falconers. Captive bred raptors can cost thousands of dollars, and travel to obtain these birds can be

expensive as well. If the raptor that the permittee intends to import has import restrictions due to invasive species concerns, the permittee will be warned by the DNR prior to acquisition. Invasive species regulations are found under Minnesota Rules, part 6216.

Minnesota Statutes, section 97A.505 POSSESSION OF WILD ANIMALS.

Subd. 3a. Transportation of animals into state.

Wild animals lawfully taken, bought, sold, or possessed outside the state may be brought or shipped into the state unless otherwise provided by law.

Minnesota Rules, chapter 1700

1700.4200 EXOTIC NEWCASTLE DISEASE.

Velogenic viscerotropic Newcastle disease, commonly referred to as exotic Newcastle disease, is a highly contagious disease of chickens, turkeys, ducks, and other fowl, including pet birds, with a mortality rate that can easily reach 100 percent. The disease was first recognized in England in 1926. Since that time, it has been found in many parts of the world. The disease has now entered the United States. Serious outbreaks have occurred in such states as Florida, Texas, New Mexico, and more recently in California and Arizona. The disease can spread in many ways and is a formidable threat to the nation's poultry industry. Over four million birds have been destroyed in California alone to contain the outbreak. Epidemiological data suggests that pet birds were responsible for the introduction of the disease in California. In order to protect our multimillion poultry industry, all appropriate precautions must be taken to prevent the introduction of exotic Newcastle disease into Minnesota. Because of the foregoing, parts 1700.4300 to 1700.4500 are deemed necessary.

1700.4400 IMPORTATION OF AVIAN SPECIES.

No avian species may be imported into Minnesota which is infected with or has been exposed to exotic Newcastle disease or originates from an area or premises under state or federal quarantine because of exotic Newcastle disease, and if deemed necessary, the board may prohibit the importation into Minnesota of any avian species originating from a state or country in which exotic Newcastle disease is known to exist.

1700.4500 HEALTH CERTIFICATE FOR AVIAN SPECIES.

During the time when exotic Newcastle disease is known to exist in the United States based upon reports of ARS, USDA, avian species, except those excluded in part 1700.4400, may not be imported into Minnesota unless the shipment is accompanied by a health certificate issued by an accredited veterinarian certifying the birds are not infected with nor have been exposed to exotic Newcastle disease and endorsed by the appropriate disease control agency of state of origin. When USDA declares that exotic Newcastle disease no longer exists in the United States, the health certificate on imported avian species covered by this rule shall not be required.

6238.1500 FLYING AND INTENTIONAL RELEASE OF RAPTORS.

Trespass. As in the section on raptor take, language has been added that explicitly states that Falconry Permits do not give the holder the right to trespass onto property that they do not own in order to hunt or fly their raptor. This is not a change in procedure from current regulations. Several falconers wanted a revision in this section that would give falconers the authorization to trespass in order to retrieve their raptor like hunters have for dog retrieval; however, that will not be possible at this time because trespass for hunting dog retrieval was added to statute by the legislature.

Minnesota Statutes, section 97B.001 TRESPASS.

Subd. 6. Retrieving hunting dogs.

A person on foot may, without permission of the owner, occupant, or lessee, enter private land without a firearm to retrieve a hunting dog. After retrieving the dog, the person must immediately leave the premises.

In order to allow trespass for raptor retrieval, the statute would have to be revised; however, because the dog statute has been abused by coyote hunters in the past (hunters standing on the road and using their dog to hunt coyotes on other people's property without permission), the DNR believes that passing an amendment to add raptor retrieval would be problematic. In both coyote hunting and falconry the animal is used as the weapon, so the same abuses could occur.

Hybrid and non-native raptors. The proposed regulations require that falconers and propagators who fly hybrid raptors and nonnative raptors to have two transmitters attached to their raptor. The requirement is based on federal regulations:

Federal Regulations, title 50, section 21.29

(e)(8) Flying a hybrid raptor in falconry. When flown free, a hybrid raptor must have attached at least two functioning radio transmitters to help you to locate the bird.

Federal Regulations, title 50, section 21.30

(p)(2) Any hybrid raptor that you fly free must have at least two attached radio transmitters to help you to locate the bird.

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Hybrid raptors can only be used if they are fitted with two radio transmitters so they can be tracked and recovered if they are lost.

The requirement for both hybrid and non-native raptors to have the same restrictions was deemed necessary because the prevention of invasive species has become a high priority due to the expense that the taxpayers incur in eradicating or slowing established populations of invasive species and the damage to native populations and industry that the invasive species cause. Although not required in the current regulations, most falconers already use at least one transmitter when flying and hunting their raptors due to the effort required to train their birds and the expense incurred when purchasing propagated raptors. With the wide variety of transmitters on the market today, even falconers flying very small birds should be able to find a transmitter that will work on their bird (transmitters for birds as small as hummingbirds are available). Species exempted from these regulations are those that comply with established protocols for addition to the unregulated species list under part 6216.0290. Certain birds native to North America, but not native to Minnesota may be candidates, such as the Aplomado falcon and Harris hawk. Both are southern species, and would not survive a Minnesota winter. Other species, such as the European or Russian goshawk which, if loose, could interbreed with Minnesota's native goshawk species, the northern goshawk, will probably not be candidates for admission.

Falconers and Propagators cannot permanently release hybrid raptors and non-native raptors to the wild (federal regulation). Additionally, they must obtain permission to release captive-bred raptor species that are native to Minnesota into the wild. This requirement is necessary to ensure that released raptors do not adversely affect wild populations, especially if the falconer or propagator intends to release a large number of raptors. Additionally, tracking the releases of captive bred raptors helps ensure that permittees who inadvertently allow their raptors to imprint do not continue to release imprinted raptors to the wild (federal regulations do not allow the release of imprinted raptors), and that urban areas, already having issues with raptor territoriality, are not burdened with additional raptor releases in that area.

Federal Regulations, title 50, section 21.30

(m) Release to the wild. You may release a captive-bred raptor to the wild if it is allowed by the State or territory in which you wish to release the raptor, except that you may not release a hybrid raptor to the wild. You must leave the captive-bred band on any raptor you release to the wild.

Federal Regulations, title 50, section 21.29

(e)(9) Releasing a falconry bird to the wild. You must follow all applicable State or territorial and Federal laws and regulations before releasing a falconry bird to the wild.

(i) If the raptor you wish to release is not native to the State or territory, or is a hybrid of any kind, you may not permanently release the bird to the wild. You may transfer it to another falconry permittee.

(ii) If the species you wish to release is native to the State or territory and is captive-bred, you may not release the bird to the wild unless you have permission from the State, tribe, or territory to release the bird. If you are permitted to do so, you must hack the bird (allow it to adjust) to the wild at an appropriate time of year and an appropriate location. You must remove its falconry band (if it has one) and report release of the bird by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(iii) If the species you wish to release is native to the State and was taken from the wild, you may release the bird only at an appropriate time of year and an appropriate location. You must remove its falconry band and report release of the bird by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

Best practices for release. Three provisions were included in the proposed regulations that are intended to help foster the long term survivability of released raptors. These provisions are:

1. **Hacking.** Hacking allows for the temporary release of a raptor to the wild so that it must survive on its own (the revised federal regulations allow for hacking with specific requirements);

Federal Regulations, title 50, section 21.29

(f)(2) “Hacking” of falconry raptors. Hacking (temporary release to the wild) is an approved method for falconers to condition raptors for falconry. If you are a General Falconer or a Master Falconer, you may hack a falconry raptor or raptors.

(i) You may need permission from your State, tribal, or territorial wildlife agency to hack a bird you possess for falconry. Check with your State, tribal, or territorial agency that regulates falconry to determine if hacking is allowed.

(ii) Any bird you are hacking counts against your possession limit and must be a species you are authorized to possess.

(iii) Any hybrid you hack must have two attached functioning radio transmitters during hacking.

(iv) You may not hack a falconry bird near a nesting area of a Federally threatened or endangered bird species or in any other location where the raptor is likely to harm a Federally listed threatened or endangered animal species that might be disturbed or taken by your falconry bird. You should contact your State or territorial wildlife agency before hacking a falconry bird to ensure that this does not occur. You can contact the State Fish and Wildlife Service office in your State or territory for information on Federally-listed species.

Federal Regulations, title 50, section 21.29

(q) Hacking of propagation raptors. “Hacking” (temporary release to the wild) is an approved method to condition raptors. You may hack a raptor that you produce under your propagation permit.

(1) You may need permission from your State or tribal wildlife agency to hack a raptor you possess under your propagation permit. Check with your State or tribal agency that regulates falconry to determine if hacking is allowed.

(2) Any hybrid you hack must have two attached functioning radio transmitters during hacking.

(3) You may not hack a raptor near a nesting area of a federally threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered animal species that might be disturbed or taken by your falconry raptor. You should contact your State or territorial wildlife agency before hacking a falconry raptor to ensure that this does not occur. Contact the Fish and Wildlife Service office in your State or territory for information on federally listed species.

2. **Reasonable survivability.** Requiring the permittee to make a reasonable determination that raptors held in captivity for long periods can survive in the wild, i.e. do they recognize and eat wild food items? Since captive raptors often get their food in ready-to-eat bite sized morsels, catching and eating food in its natural form can be challenging. If they are unable to perform this most basic survival task, one can reasonable assume that they will not survive for long in the wild.
3. **Location and time of year.** Requiring that the release of a raptor must be in an appropriate location at the appropriate time of year for that species (federal regulation).

Federal Regulations, title 50, section 21.29

(e)(9)(iii) If the species you wish to release is native to the State and was taken from the wild, you may release the bird only at an appropriate time of year and an appropriate location. You must remove its falconry band and report release of the bird by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

Bands and Reporting. The last restrictions in this section, regarding bands and reporting, are federal requirements, and will be discussed in their appropriate sections (6238.1600 and 6238.1650) of the rule by rule analysis starting on page 58.

The following federal restrictions are not explicitly included in the proposed regulations but still apply:

Federal Regulations, title 50, section 21.29

(f)(17) Practicing falconry in the vicinity of a Federally listed threatened or endangered animal species. In practicing falconry you must ensure that your activities do not cause the take of Federally listed threatened or endangered wildlife. “Take” under the Endangered Species Act means “to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct” (Endangered Species Act §3(18)). Within this definition, “harass” means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering, and harm” means an act that actually kills or injures wildlife (50 CFR 17.3). To obtain information about threatened or endangered species that may occur in your State or on tribal lands where you wish to practice falconry, contact your State, tribal, or territorial agency that regulates falconry. You can contact your State Fish and Wildlife Service office for information on Federally-listed species.

(f)(19) Prey item killed by a falconry bird without your intent, including an animal taken outside of a regular hunting season. (i) You may allow your falconry bird to feed on the animal, but you may not take the animal into your possession.

(ii) You must report take of any federally listed threatened or endangered species to our Ecological Services Field Office for the location in which the take occurred.

6238.1550 TRANSPORTING, RELOCATING, AND HOLDING OF RAPTORS.

Federal regulations have extensive and explicit requirements regarding transporting, relocating, and holding (temporary and permanent) raptors, so the majority of the language in this section of the proposed regulations either refers to federal regulations or is designed to facilitate implementation of federal regulations.

Federal Regulations, title 50, section 21.29

(d)(4) Facilities you must have for a raptor when you are transporting it, using it for hunting, or are away from your home with it. You must be sure that the bird has a suitable perch and is protected from extreme temperatures, wind, and excessive disturbance. A “giant hood” or similar container is acceptable for transporting or housing a raptor when you are away from the permanent facility where it is housed.

Carrying permits. The proposed regulations require that permittees carry their permit when conducting falconry or propagation related activity. This requirement is similar to requirements in the federal falconry regulations:

Federal Regulations, title 50, section 21.29

(c)(7) Carrying your permit(s) when conducting falconry activities. You must have your permit(s) or legible copies of them in your immediate possession if you are not at the location of your falconry facilities and you are trapping, transporting, working with, or flying your falconry raptor(s).

Moving. Under the proposed regulations, falconers and propagators must report a permanent change of address within five days of the move. This is consistent with the minimum federal requirement (there are other federal regulations which allow up to 30 days to update Falconry and Propagation permits when moving across state lines).

Federal Regulations, title 50, section 21.29

(d)(1)(iv) You must inform your State, tribal, or territorial agency within 5 business days if you change the location of your facilities.

(h) Updating a falconry permit after a move. If you move to a new State or outside the jurisdiction of your tribe or territory and take falconry birds with you, within 30 days you must inform both your former State, tribe, or territory and the permitting authority for your new place of residence of your address change. To obtain a new falconry permit, you must follow the permit application procedures of the authority under which you wish to acquire a new permit. You may keep falconry birds you hold while you apply for a new falconry permit. However, the State, tribe, or territory into which you move may place restrictions on your possession of falconry birds until you meet the residency requirements there.

Federal Regulations, title 50, section 21.30

(x) Updating a raptor propagation permit after a move. If you move within your State or get a new mailing address, you must notify us within 30 days (see §13.23(c) of this chapter). If you move to a new State, within 30 days you must inform both your former and your new (if applicable) Migratory Bird Permit Offices of your address change. If you have new propagation facilities, you must

provide information, pictures, and diagrams of them, and they may be inspected in accordance with Federal or State requirements. Thereafter, no mandatory inspections of the facilities will continue.

Permittees must also follow federal regulations for temporarily housing their raptor following a move, and then must have their new facilities built and inspected per federal requirements (they have 120 days following a move to build their facilities):

Federal Regulations, title 50, section 21.29:

(d)(5) Temporarily housing a raptor outside of your permanent facilities when you are not transporting it or using it for hunting. You may house a raptor in temporary facilities for no more than 120 consecutive calendar days if the bird has a suitable perch and is protected from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

Under the proposed regulations, falconers and propagators are also required to follow federal regulations for part-year facilities:

Federal Regulations, title 50, section 21.29

(c)(1)(iii) If you reside for more than 120 consecutive days in a State or territory or on tribal lands other than the location of your primary residence, your falconry facilities in the second location must meet the standards in paragraph (d) of this section and of the corresponding State, tribal, or territorial lands, and your facilities must be listed on your falconry permit.

Facilities located offsite or on rental property. In the proposed regulations, falconers may house their raptors in facilities that are on property owned by another person or at a different location from their primary residence. In this way, falconers who rent their primary residence, or are restricted from possessing raptors at their primary residence may still participate in the sport (some local jurisdictions do not allow raptor possession, so permittees must house their birds off site). Regardless of location, the facilities must meet federal facility standards and the raptors must be cared for in a humane and healthy manner; therefore, the proposed regulations impose spatial limits (30 miles or less from the permittee's primary residence) or temporal limits (120 days or less if the facilities are over 30 miles from the permittee's primary residence) on such arrangements. Federal regulations regarding this arrangement must also be followed:

Federal Regulations, title 50, section 21.29

(2) Falconry facilities on property you do not own —(i) Your falconry facilities may be on property owned by another person where you reside, or at a different location. Regardless of location, the facilities must meet the standards in paragraph (d)(1) of this section and those of the State, tribe, or territory from which you have a falconry permit.

(ii) You must submit to your State, tribal, or territorial agency that regulates falconry a signed and dated statement showing that you agree that the falconry facilities and raptors may be inspected without advance notice by State, tribal (if applicable), or territorial authorities at any reasonable time of day, but you must be present. If your facilities are not on property that you own, you must submit a signed and dated statement showing that the property owner agrees that the falconry facilities and raptors may be inspected by State, tribal (if applicable), or territorial authorities at any reasonable time of day in the presence of the property owner; except that the authorities may not enter the facilities or disturb the raptors unless you are present.

Temporary Care. The provisions in the proposed regulations are similar to those of the current regulations with regard to temporary facilities and temporary care arrangements, but the language has been updated to accommodate the revised federal regulations.

1. **Temporary care.** Under the proposed regulations, permittees may allow another person to temporarily care for their raptors in accordance with federal regulations. However, they must inform the commissioner in writing within 10 days of the loan or transfer detailing where the raptor will be housed, who is to care for the raptor, what the person is allowed to do with the raptor (falconers may fly another person's falconry birds under federal regulations), and approximately how many days the raptor is expected to be under the care of the other person. The appropriate transfer forms must be filed if the caretaker is a falconer or a propagator.

Federal Regulations, title 50, section 21.29

(d)(6) Care of falconry raptors by another falconry permittee. Another falconry permittee may care for a raptor or raptors for you at your facilities or at that person's facilities for up to 120 consecutive calendar days. The other person must have a signed and dated statement from you authorizing the temporary possession, plus a copy of FWS form 3-186A that shows that you are the possessor of each of the raptors. The statement must include information about the time period for which he or she will keep the raptor(s), and about what he or she is allowed to do with it or them.

(i) Your raptor(s) will remain on your falconry permit, and will not be counted against the possession limit of the person caring for your raptors.

(ii) If the person caring for your raptor(s) holds the appropriate level falconry permit, he or she may fly your raptor(s) in whatever way you authorize, including hunting.

(iii) This care of your raptors may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency. The State, tribe, or territory may consider such instances on a case-by-case basis.

(d)(7) Care of falconry raptors by someone who does not have a falconry permit. Another person may care for falconry birds you possess at your facilities for up to 45 consecutive calendar days.

(i) The raptor(s) will remain on your falconry permit.

(ii) The raptors must remain in your facilities.

(iii) This care may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency.

(iv) The person(s) caring for your raptors may not fly them for any reason.

Federal Regulations, title 50, section 21.30

(i) Care of a propagation raptor by another person —

(1) Care of a propagation raptor by another permittee. The regulations in this paragraph pertain to care of propagation raptors by persons other than the permittee. Another person who can legally possess raptors may care for a propagation raptor for you for up to 120 calendar days.

(i) The person must have a letter from you authorizing him or her to care for the birds, beginning on the date of your letter.

(ii) The raptor will remain on your raptor propagation permit. If the person who temporarily holds it for you is a falconer or a captive propagator, the raptor will not be counted against his or her possession limit on raptors held for falconry or propagation. However, the other person may not use the raptor in falconry or in propagation.

(iii) If you wish to have someone else care for a propagation raptor for more than 120 days, or if you wish to let another person use the raptor in falconry or captive propagation, you must transfer the raptor to that person and report the transfer by submitting a completed FWS Form 3-186A.

(2) Care of a propagation raptor by an individual who does not have a propagation or falconry permit. Another person may care for propagation raptors you possess for up to 120 consecutive calendar days.

(i) The raptor(s) will remain on your propagation permit.

(ii) The raptors must remain in your facilities.

(iii) This care may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency. The person(s) caring for your raptors may not fly them for any reason.

(j) Care of nestlings by an individual who does not hold a migratory bird permit. Another person may temporarily care for and band nestlings you hold from the time they are hatched until they are fully feathered. You may allow the other person to keep the nestlings at another location. You must give the individual a letter authorizing him or her to care for the nestlings, beginning on the date of your letter. The care might be part of each day during the nestling period so that the nestlings can be fed, or it might be a series of full days if transport to and from the breeding facility is not practical or needed.

2. **Duration.** The procedures in the proposed regulations for temporary facilities retain the 30 day maximum allowed under current regulations but have been updated to accommodate longer possession allowances under the revised federal regulations provided authorization to extend that time is obtained from the DNR.

Federal Regulations, title 50, section 21.29

(5) Temporarily housing a raptor outside of your permanent facilities when you are not transporting it or using it for hunting. You may house a raptor in temporary facilities for no more than 120 consecutive calendar days if the bird has a suitable perch and is protected from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(c)(1)(iii) If you reside for more than 120 consecutive days in a State or territory or on tribal lands other than the location of your primary residence, your falconry facilities in the second location must meet the standards in paragraph (d) of this section and of the corresponding State, tribal, or territorial lands, and your facilities must be listed on your falconry permit.

6238.1600 BANDING OR TAGGING OF RAPTORS.

The section on banding raptors has been revised for clarity and to comport with federal regulations. The procedures have not changed from the current regulations, except to allow the use of ISO-compliant microchips and to require bands on all raptors. All captive bred nestlings must be banded with a numbered, seamless metal U.S. Fish and Wildlife Service band (commonly referred to as a propagation band). All propagated raptors that have been transferred to another permit type or have lost their propagation band and all wild caught raptors must have a permanent (plastic), non-reusable, numbered U.S. Fish and Wildlife band (commonly referred to as a falconry band). All eagles must be banded with an eagle band provided by the U.S. Fish and Wildlife Service.

Federal Regulations, title 50, section 21.29

*(c)(6) Banding or tagging raptors used in falconry. (i) If you take a goshawk, Harris's hawk (*Parabuteo unicinctus*), peregrine falcon (*Falco peregrinus*), or gyrfalcon (*Falco rusticolus*) from the wild or acquire one from another falconer or a rehabilitator, and if the raptor is not already banded, you must band it with a permanent, nonreusable, numbered U.S. Fish and Wildlife Service leg band that your State, tribal, or territorial agency will supply. If you wish, you may purchase and implant an ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip in addition to the band. You must report the band number when you report your acquisition of the bird. Contact your State, tribal, or territorial agency for information on obtaining and disposing of bands. Within 10 days from the day on which you take the raptor from*

the wild, you must report take of the bird by entering the required information (including the band number) in the electronic database at <http://permits.fws.gov/186A> or, if required by your permitting agency, by submitting a paper form 3–186A to your State, tribal, or territorial agency that governs falconry. You may request an appropriate band from your State, tribal, or territorial agency in advance of any effort to capture a raptor. Your State, tribe, or territory may require that you band other species taken from the wild.

(ii) A raptor bred in captivity must be banded with a seamless metal band (see §21.30). If you must remove a seamless band or if it is lost, within 10 days from the day you remove or note the loss of the band, you must report it and request a replacement U.S. Fish and Wildlife Service nonreusable band from your State, tribe, or territory. You must submit the required information electronically immediately upon rebanding the raptor at <http://permits.fws.gov/186A> or, if required by your permitting agency, by submitting a paper form 3–186A to your State, tribal, or territorial agency that governs falconry. You must replace a seamless band that is removed or lost. You may implant an ISO-compliant (134.2 kHz) microchip in a falconry raptor in addition to the seamless band.

(iii) If the band must be removed or is lost from a raptor in your possession, you must report the loss of the band within 5 days, and you must then do at least one of the following:
(A) Request a U.S. Fish and Wildlife Service nonreusable band from your State, tribal, or territorial agency that regulates falconry. You must submit the required information within 10 days of rebanding the raptor at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.
(B) Purchase and implant an ISO-compliant (134.2 kHz) microchip in the bird and report the microchip information at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A form to your State, tribal, or territorial agency that governs falconry.

(iv) You must not alter, deface, or counterfeit a band. You may remove the rear tab on a band on a raptor you take from the wild, and you may smooth any imperfect surface if you do not affect the integrity of the band or the numbering on it.

(v) If you document health or injury problems for a raptor you possess that are caused by the band, the State, tribe, or territory may provide an exemption to the requirement for that raptor. In that case, you must keep a copy of the exemption paperwork with you when transporting or flying the raptor. If your bird is a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon, you must replace the band with an ISO-compliant microchip that we will supply to your State, tribe, or territory. We will not provide a microchip for a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon unless you have demonstrated that a band causes an injury or a health problem for the bird.

(vi) You may not band a raptor removed from the wild with a seamless numbered band.

Federal Regulations, title 50, section 21.29

*(e) Banding of raptors used for propagation. —(1) Certain species. You must band a goshawk (*Accipiter gentilis*), Harris's hawk (*Parabuteo unicinctus*), peregrine falcon (*Falco peregrinus*), or gyrfalcon (*Falco rusticolus*) that you take from the wild to use in captive propagation.*

(i) You must use a nonreusable band that we provide.

(ii) You may purchase and implant an ISO (International Organization for Standardization)-compliant 134.2 kHz microchip in the raptor in addition to banding it.

(iii) You must report the information on the raptor (including information identifying the microchip, if you implant one, and where it is located) at <http://permits.fws.gov/186A> or by submitting a paper FWS Form 3–186A form to your State or tribal agency that governs propagation, if applicable, and to us.

(2) Banding nestlings. Unless a particular nestling is specifically exempted, you must band every captive-bred raptor within 2 weeks of hatching.

(i) You must use a numbered, seamless band that we will provide.

(ii) You must use a band with an inside diameter that is small enough to prevent loss or removal of the band when the raptor is grown without causing serious injury to the raptor or damaging the band's integrity or one-piece construction.

(iii) You may band a nestling with more than one band of different sizes if you cannot determine the proper size when you band the nestling. You must then remove and destroy all but the correctly sized band before the nestling is 5 weeks old.

(iv) You may submit a letter requesting an exemption from the banding requirement for any nestling or fledgling for which the band causes a problem. If you demonstrate that the band itself or the behavior of the raptor in response to the band poses a hazard to the raptor, we may exempt that raptor from the banding requirement. You must destroy the band after you remove it.

(3) You may purchase and implant an ISO-compliant 134.2 kHz microchip in the raptor in addition to a band. You must report information to identify the microchip and where on the raptor the chip is implanted when you report your acquisition of the raptor.

(4) If a captive-bred raptor is not banded with a seamless band, or if you must remove the seamless band from a captive-bred raptor, you must band the bird with a nonreusable band that we provide.

6238.1650 REPORTING REQUIREMENTS.

Raptor reporting. For nearly every transaction or event involving raptors (acquisition, disposition, transfer, loan, escape, death, stolen, or rebanding), a federal reporting form must be completed. The only event not included in this section is the hatching of propagated raptors—those are reported in the annual propagation report or upon transfer from the propagation program. There are notations throughout the revised federal regulations detailing when and how events must be reported. All of those occurrences have been compiled into this section of the proposed regulations to enhance permittee compliance. Permittees generally have ten days to report a change in raptor status, although several exceptions are noted (loss to the wild and rebanding). Under the old federal regulations, permittees only had five days to report acquisition or disposition of their raptors. Besides the expanded time for reporting, there are only a few instances in the proposed regulations that differ in practice from current regulations.

Federal Regulations, title 50, section 21.29:

(e)(6)(i) If you acquire a raptor; transfer, reband, or microchip a raptor; if a raptor you possess is stolen; if you lose a raptor to the wild and you do not recover it within 30 days; or if a bird you possess for falconry dies; you must report the change within 10 days by entering the required information in the electronic database at <http://permits.fws.gov/186A> or by submitting a paper form 3-186A to your State, tribal, or territorial agency that governs falconry.

(ii) If a raptor you possess is stolen, you must report the theft to your State, tribal, or territorial agency that regulates falconry and to your Fish and Wildlife Service Regional Law Enforcement office (see paragraph (e)(3)(ii)(E) of this section) within 10 days of the theft of the bird.

1. **Propagation.** Under the revised federal regulations, falconers now are allowed to use their falconry raptors in a falconer's own propagation program without transferring it to their Propagation Permit, provided the raptor is used in propagation for less than 8 months in a given year. This change is included in the proposed regulations and would apply only to individuals who have both a Falconry Permit and Propagation Permit. Transfer paperwork would still be required for raptors that move from one individual's Falconry Permit to a different individual's Propagation Permit. This requirement is necessary for tracking purposes and to ensure that those birds "loaned" for propagation return to the correct permittee or are officially transferred if so desired.

Federal Regulations, title 50, section 21.29:

(f)(7) Use of raptors held under a falconry permit in captive propagation . You may use raptors you possess for falconry in captive propagation if you or the person overseeing the propagation has the necessary permit(s) (see §21.30). You do not need to transfer a bird from your falconry permit if you use it for fewer than 8 months in a year in captive propagation, but you must do so if you permanently transfer the bird for propagation. The bird must then be banded as required in §21.30.

2. **Loan versus Transfer.** The proposed regulations have updated language which clearly defines when a falconer or propagator must fill out the form for a “loan” or for a “transfer” of a raptor and whether the bird will count against the possession limit of the recipient or the lender. The language clears up past ambiguities in terms and in practices (birds would often be “loaned” indefinitely between parties, and these “loans” would often occur across state lines, creating some ambiguity regarding whose possession limit the bird counted against—recipient or lender). The provisions regarding “loans” and “transfers” are for state and federal tracking purposes. Individuals may make civil contracts to ensure that “transfers” are not permanent between the parties if that is not their intent.

Federal Regulations, title 50, section 21.29

(d)(6) Care of falconry raptors by another falconry permittee. Another falconry permittee may care for a raptor or raptors for you at your facilities or at that person's facilities for up to 120 consecutive calendar days. The other person must have a signed and dated statement from you authorizing the temporary possession, plus a copy of FWS form 3-186A that shows that you are the possessor of each of the raptors. The statement must include information about the time period for which he or she will keep the raptor(s), and about what he or she is allowed to do with it or them.

(i) Your raptor(s) will remain on your falconry permit, and will not be counted against the possession limit of the person caring for your raptors.

(ii) If the person caring for your raptor(s) holds the appropriate level falconry permit, he or she may fly your raptor(s) in whatever way you authorize, including hunting.

3. **Loss.** Federal regulations allow permittees 30 days to search for their raptor if it is lost. The proposed regulations allow permittees 30 days to search for their raptor prior to submitting the reporting form; however, if the raptor is a hybrid or non-native raptor, its loss must be reported within 48 hours as outlined in invasive species regulations under part 6216.0280. Currently, most falconers contact the agency within 48 hours of losing their raptor anyway in the event that someone reports seeing or capturing the raptor (loose falconry raptors are generally obvious by their long jesses (strings) hanging down).

Minnesota Rules, part 6216.0280 ESCAPE OF NONNATIVE SPECIES.

Subpart 1. Reporting.

To report an unauthorized introduction of prohibited invasive animal species, regulated invasive animal species, or unlisted nonnative animal species, in compliance with Minnesota Statutes, section 84D.08, a person shall notify the department's area or regional conservation officer or the invasive species program staff in the department's St. Paul office by telephone within 48 hours after learning of the unauthorized introduction.

Subp. 2. Information required.

The following information shall be provided to the department about the unauthorized introduction:

- A. the quantity and species;*
- B. the location of the introduction;*
- C. the date and time the introduction occurred or was discovered;*
- D. the last known location of the species; and*
- E. the reporter's address and daytime and evening telephone numbers.*

Recipient Permits. Prior to transferring a raptor in their possession, a permittee must verify that the recipient has obtained any necessary permits required to obtain a raptor from them. This requirement is necessary for out of state transfers, particularly for the transfers of wild Minnesota raptors that will require a Nonresident Take Permit. If this requirement is not present, there would be no consequences for permittees who knowingly transfer raptors to people out of state that do not obtain the required permits necessary to receive the raptor.

Document maintenance and reporting. Required document maintenance and reporting by the permittees has not changed under the proposed regulations from the current regulations. Permittees must keep documentation on their current raptors and raptors that they have possessed in the past (federal regulations require a minimum of five years documentation) and the bands in their possession.

The word “annually” was added into the permitting requirements because all permittees will be required to submit an annual report. Annual reports are currently required for Nonresident Take and Propagation permittees, but were discontinued in 2005 for Falconry permittees due to complaints by the falconers that the old report format was too time consuming and redundant. However, the annual reports were valuable in maintaining accurate state and federal records (an accurate database is a federal requirement). Since the falconry annual reports were discontinued, numerous errors have arisen in the state database, usually as a result of lapses by permittees in submitting their required transfer reporting forms. Therefore, annual reporting is reinstated in the proposed regulations but with a more streamlined, less onerous process. An annual report will be computer generated from the permittees’ raptor transfer submissions listed in the database and sent to each permittee. If the permittee has been submitting their paperwork as required under state and federal regulations, they should have to do nothing more than verify that the information in the database is correct with their signature, If not, they must then submit the delinquent paperwork (under federal regulations they must submit raptor transfer information within 10 days of the transfer).

Federal Regulations, title 50, Section 21.29

(d)(9) Inspections. Falconry equipment and records may be inspected in the presence of the permittee during business hours on any day of the week by State, tribal, or territorial officials.

(e)(6)(iii) You must keep copies of all electronic database submissions documenting take, transfer, loss, rebanding or microchipping of each falconry raptor until 5 years after you have transferred or lost the bird, or it has died.

Federal Regulations, title 50, Section 21.30

(d) Inspection. In the presence of the permittee, Federal or State officials may inspect propagation raptors, facilities, equipment, and records during business hours on any day of the week.

(s) Records of captive propagation efforts. You must maintain complete and accurate records of all operations, including the following, for at least 5 years after the expiration of your permit. However, you may want to retain your records for a longer time if you want to get another migratory bird permit, a Convention on International Trade in Endangered Species of Wild Fauna and Flora permit, or a Wild Bird Conservation Act permit.

(1) The acquisition of raptors, eggs, or semen you acquired from the wild or that were transferred to you.

(i) What you acquired, and the species, sex, age, and band number of each bird you acquired.

(ii) *Whether you acquired the raptor, egg, or semen from the wild or you purchased it or it was transferred to you.*

(2) *The disposition of raptors, eggs, or semen you sell or transfer to another permittee. The information should include the band number of raptors you sell or transfer.*

(t) *Annual report. You must submit a completed FWS Form 3–202–8 to your Regional Migratory Bird Permit office by January 31 each year for January 1 through December 31 of the preceding year.*

6238.1700 PERMIT DURATION, RENEWAL, AND TERMINATION.

Renewal and duration. The duration for Falconry and Nonresident Take permits (three years) was not altered under the proposed regulations (federal regulations do not specify a duration for these permits). The duration for federal Propagation Permits changed from three years to five years; however, the duration of three years under the current state regulations will not change in the proposed state regulations. Most propagators are falconers, so at the time of renewal for their state permit, they only need to submit one form to renew both their state Falconry and state Propagation permits. Also, when the expiration for a permittee’s state Propagation Permit does not coincide with the expiration for their state Falconry Permit, permittees often need more reminders to renew, which is an inefficient use of state time. Abatement Permits will also have a three-year duration for the same reasons. Eagle Permits are issued as Special Permits and are for the life of the bird or until it is transferred.

Federal Regulations, title 50, Section 21.30

(y) *Permit expiration. Your Federal permit may be valid for up to 5 years from when it is issued or renewed. It will expire on the same day as your State permit, unless your State permit is for a period longer than 5 years, or unless we amend, suspend, or revoke it.*

The current state requirement to renew permits 30 days prior to expiration was retained under the proposed regulations so that there is no lapse in permits.

Permit termination due to death. Under the proposed regulations, falconers and propagators are also required to follow federal regulations for raptor transfers upon the death of the permittee:

Federal Regulations, title 50, Section 21.29

(f)(21) *Transfer of falconry raptors if a permittee dies. 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 authority that issued it.*

Federal Regulations, title 50, Section 21.30

(r) *Transfer of propagation raptors and offspring if a permittee dies. A surviving spouse, executor, administrator, or other legal representative of a deceased raptor propagation permittee may transfer any bird, eggs, or semen held by the deceased 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 our discretion.*

Permit Revocation. Current regulations provide for permit revocation and seizure/confiscation of all raptors held if a falconer or propagator cannot or will not follow regulations. Included in the proposed regulations are several other circumstances that would necessitate permit revocation:

1. **Associated permits revoked.** If any permit issued under this section is revoked, all permits that the permittee holds under this section shall be revoked at that time. This stipulation is important because all permits in this section require a certain standard of handling and care of the same type of animal. If a permittee is not caring for their raptors under one permit, they are probably not caring for their raptors any better under their other permits. Most of the permits hinge on each other anyway (example: Abatement Permittees must be Master Falconers).
2. **Federal permit revoked.** If a permittee's federal permit is revoked, their associated state permit will also be revoked pending reinstatement of the federal permit. If a permittee's federal permit is revoked, they cannot possess raptors under the state permit. This is current practice and has not changed under the proposed regulations, but it has been explicitly added to the regulations for clarity.
3. **Neglect.** Permittees who have any incidence of raptor mortality or a high incidence of raptor loss shall be subject to additional review (inspections and/or submission of veterinarian's notes or necropsies on the dead raptors). This provision is necessary to effectively deal with individuals that will not follow the regulations or cannot keep birds alive that are under their care. The new regulations leave several options open to the commissioner if evidence is found that the permittee is neglecting the health, safety, or welfare of the raptors under their care. Depending upon the severity of the situation, the permittee may receive a reduction in class, require a sponsor, and/or have their permit revoked. The USFWS is no longer administering Falconry Permits (they are only overseeing state programs); therefore, the administrative necessity of revoking a permit is left up to the state. However, they do allow persons whose permit has been revoked the possibility of permit restoration:

Federal Regulations, title 50, Section 21.29

(i) Restoration of revoked permits. Upon request of the person whose permit has been revoked, the State, tribe, or territory may restore the person's falconry permit at the end of the revocation period.

Disposition of raptor feathers, products, and carcasses. The current state regulations that provide for the disposition of raptor feathers, products, and carcasses have been removed in the proposed regulations in deference to the thorough requirements listed in the new federal regulations. The new federal regulations (below) are substantially the same as the current state regulations, but more thorough.

Federal Regulations, title 50, Section 21.29

(12) Feathers that a falconry bird or birds molts. (i) For imping (replacing a damaged feather with a molted feather), you may possess tail feathers and primary and secondary wing feathers for each species of raptor you possess or previously held for as long as you have a valid falconry permit. You may receive feathers for imping from other permitted falconers, wildlife rehabilitators, or propagators in the United States, and you may give feathers to them. You may not buy, sell, or barter such feathers.

(ii) You may donate feathers from a falconry bird, except golden eagle feathers, to any person or institution with a valid permit to have them, or to anyone exempt from the permit requirement under §21.12.

(iii) Except for primary or secondary flight feathers or retrices from a golden eagle, you are not required to gather feathers that are molted or otherwise lost by a falconry bird. You may leave the feathers where they fall, store them for imping, or destroy them. However,

you must collect molted flight feathers and retrices from a golden eagle. If you choose not to keep them for imping, you must send them to the National Eagle Repository.

(iv) We request that you send all feathers (including body feathers) that you collect from any falconry golden eagle and that you do not need for imping, to the National Eagle Repository at the following address: U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022. The telephone number at the Repository is 303-287-2110.

(v) If your permit expires or is revoked, you must donate the feathers of any species of falconry raptor except a golden eagle to any person or any institution exempt from the permit requirement under §21.12 or authorized by permit to acquire and possess the feathers. If you do not donate the feathers, you must burn, bury, or otherwise destroy them.

(13) Disposition of carcasses of falconry birds that die. (i) You must send the entire body of a golden eagle you held for falconry, including all feathers, talons, and other parts, to the National Eagle Repository.

(ii) You may donate the body or feathers of any other species of falconry raptor to any person or institution exempt under §21.12 or authorized by permit to acquire and possess such parts or feathers.

(iii) If the bird was banded or microchipped prior to its death, you may keep the body of any falconry raptor except that of a golden eagle. You may keep the body so that the feathers are available for imping, or you may have the body mounted by a taxidermist. You may use the mount in giving conservation education programs. If the bird was banded, you must leave the band on the body. If the bird has an implanted microchip, you must leave the microchip in place.

(iv) If you do not wish to donate the bird body or feathers or keep it yourself, you must burn, bury, or otherwise destroy it or them within 10 days of the death of the bird or after final examination by a veterinarian to determine cause of death. Carcasses of euthanized raptors could pose a risk of secondary poisoning of eagles and other scavengers. You must take appropriate precautions to avoid such poisonings.

(v) If you do not donate the bird body or feathers or have the body mounted by a taxidermist, you may possess the flight feathers for as long as you have a valid falconry permit. However, you may not buy, sell, or barter the feathers. You must keep the paperwork documenting your acquisition of the bird.

Federal Regulations, title 50, Section 21.30

(k) Disposition of molted feathers from a live raptor or carcasses of raptors held under your permit.

(1) You may donate the body or feathers of any species you possess under your propagation permit to any person or institution exempt under §21.12 or authorized by permit to acquire and possess such parts or feathers.

(2) For any raptor you hold under your propagation permit, if the bird was banded or microchipped prior to its death, you may keep the body to have the feathers available for imping or to have the body mounted by a taxidermist. You may use the mount in propagation activities or in giving conservation education programs. If the bird was banded, you must leave the band on the body. If the bird has an implanted microchip, the microchip must be placed inside the mounted bird.

(3) If you do not wish to donate the bird body or feathers or keep it or them yourself, you must burn, bury, or otherwise destroy it or them within 10 days of the death of the bird or after final examination by a veterinarian to determine cause of death. Carcasses of euthanized raptors could pose a risk of secondary poisoning of eagles and other scavengers. You must take appropriate precautions to avoid such poisonings.

(4) If you do not donate the bird body or feathers or have the body mounted by a taxidermist, you may possess the flight feathers for as long as you have a valid raptor propagation or falconry permit. However, you may not buy, sell, or barter the feathers. You must keep the paperwork documenting your acquisition of the bird.

(l) Raptor products. You may possess addled or blown eggs, nests, and feathers from raptors held under permit, and may transfer any of these items to any other person authorized to possess them.

6238.1750 DISCLAIMER OF LIABILITY

The final part of the proposed rule is a disclaimer of liability in the event that a falconer, propagator, or third party is injured in the course of participating under one of these permits. The language is similar to that found in other state regulations (Minnesota Rules, part 6244.1800 and 6244.3200).

LIST OF EXHIBITS

In support of the need for and reasonableness of the proposed rules, the Department anticipates that it will enter the following exhibits into the hearing record:

- Migratory Bird Permit Memorandum from the U.S. Department of Interior dated August 22, 2007
- Federal Special Purposes Permit Application Form and Instructions

CONCLUSION

Based on the foregoing the proposed rules are both needed and reason able.

February 22, 2013

/s/ Tom Landwehr
Commissioner