

comments, most of which were submitted by individuals who were not rehabilitators. Of the remaining 139 comments, 123 were from rehabilitators; 10 were from State agencies; and 6 were from associations.

Section-by-Section Analysis

The following preamble text discusses the substantive comments received and provides our responses to those comments. Additionally, it provides an explanation of significant changes from the proposed rule. We do not address the comments that were favorable and contained no recommendations for revisions. Comments are organized by topic. The citations in the headings correspond to provisions within the Final Rule.

Revisions to 50 CFR part 17:

Comment: The rulemaking contains provisions that revise § 17.21 to exempt permitted migratory bird rehabilitators from having to obtain an additional permit under 50 CFR 17, which governs federally listed threatened and endangered species. Yet the word “endangered” is not accompanied by the word “threatened.” Do those provisions apply to species that are threatened, as well as to those that are endangered?

Service response: The rule addresses both threatened and endangered species. Within existing regulations, § 17.21 addresses endangered species, specifically, while § 17.31 addresses threatened species. However, by reference, most of § 17.21 does apply to threatened, as well as endangered, species because the regulations at § 17.31 state: “Except as provided in subpart A of this part, or in a permit issued under this subpart, *all of the provisions of § 17.21 shall apply to threatened wildlife*, except § 17.21(c)(5)” [italics added here for emphasis]. Thus, in order to exempt rehabilitators from the requirement to obtain a separate permit under part 17 to rehabilitate both endangered and threatened species, this rule needs only to amend the sections of part 17 that address endangered species (§ 17.21), and not also § 17.31, which addresses threatened species.

Scope of Regulations. (§ 21.2): The proposed rule contained revisions to § 21.2 in order to allow the new permit regulation to cover rehabilitation of eagles as well as other migratory birds. This was necessary because, under current regulations, permits authorizing activities involving eagles are covered under separate regulations at part 22, rather than part 21, which covers permits for all other migratory birds. Eagles have their own permit

regulations because they are protected not only by the MBTA, but also by the Bald and Golden Eagle Protection Act (BGEPA), which contains different, and in some respects more protective, language than the MBTA. This final rule revises the proposed § 21.2 language in order to clarify that the migratory bird permit exemptions at § 21.12(a), (c), and (d) also apply to eagles.

This final rule also introduces a minor revision to part 22 (eagle permits). The revision to § 22.11 accomplishes the same purpose as the changes to § 21.2, and was necessary to bring part 21 (migratory bird permits) and part 22 into agreement. Prior to this rulemaking, § 22.11 provided that certain actions prohibited by the BGEPA may be permitted only under part 22, part 13, and/or § 21.22 (banding or marking permits). Thus, the only permit regulations within part 21 that applied to eagles were regulations pertaining to banding and marking permits. The new § 22.11 language extends the application of part 21 to eagles, by providing that actions prohibited under the BGEPA may be permitted by part 22, part 13, and/or part 21, as provided by § 21.2.

Permit exemption for public health officials. § 21.12(c): The Service has revised this provision for the final rule by adding employees of land management agencies to the list of exempted personnel who may collect infected birds without a permit. We made this revision because of the increasing presence of West Nile virus nationwide, which has been accompanied by an increased need for land managers, such as the National Park Service, to monitor the spread of the virus in avian populations on public lands.

Comment: The word “toxins” should be changed to “causes” to allow public health officials to pick up birds injured by natural causes.

Service response: Replacing the word “toxins” with “causes” would create a different result from what we intended. This provision was not meant to allow public health officials to collect birds injured by natural causes or accidents. Rather it is intended to cover only situations where birds are suspected to have been stricken by infectious diseases (including those caused by natural toxins). The final rule continues to provide that public health officials acting without a permit would not be authorized to collect and possess birds that appear to have been injured as the result of anything but infectious diseases or natural toxins. (A different provision within the new permit regulation authorizes any person to pick up an injured bird in order to

immediately take it to a permitted migratory bird rehabilitator.)

Comment: Persons exempt from migratory bird permit requirements by § 21.12 should still have to adhere to some facility and husbandry standards.

Service response: As part of a separate rulemaking, we intend to propose language that addresses § 21.12 permit exemptions and establishes baseline facility and husbandry requirements for those entities exempted under § 21.12.

Comment: Public health officials will not adequately safeguard the birds, because they won't be able to recognize the differences between public health threats and other conditions that do not affect public health. Rehabilitators should accompany them. Birds may be unnecessarily killed. The regulations need to include provisions addressing the care of these birds after they are collected, as well as a requirement to notify a permitted rehabilitator, and recordkeeping requirements.

Service response: Rehabilitators are free to volunteer their services to accompany such public health officials. However, whether or not rehabilitators are present, these officials need to be able to pick up birds that may be evidence of a high risk to public health. Furthermore, the majority of these birds will already be dead or mortally ill. We do not agree that it would be in the best interest of the overall protection of migratory birds, or that it will enhance public perception of the field of migratory bird rehabilitation, to impose onerous recordkeeping requirements on persons acting to protect public health in situations where most birds are dead or doomed.

Permit exemption for veterinarians § 21.12(d): **Comment:** Veterinarians are not usually trained to treat birds. And wild birds may be given less priority since they are not associated with paying customers. Veterinarians should be required to get permits.

Service response: The purpose of this exemption is to make legal a practice that is common today—that is, the situation where a person finds an injured bird, and not knowing what else to do, brings it to a veterinarian. Many veterinarians do not want to turn away an injured creature, particularly if it means that it may not survive long enough to be taken to a permitted migratory bird rehabilitator. Right now, if the veterinarian tries to stabilize the bird, he or she is violating the law. The Service believes that veterinarians should not be forced to make the choice between providing emergency care to a stricken bird and breaking the law. Furthermore, we believe that this provision will foster greater awareness