

less experienced rehabilitators should still be held to the 90-day period with permission needed to extend it.

*Service response:* We do not agree that less experienced rehabilitators should be allotted less time to treat and condition birds for release.

*Comment:* The proposed rule says nothing about the need to release birds as soon as possible. The 180-day period is too long. Birds will become habituated to people and the conditions of rehabilitation facilities.

*Service response:* The final rule states that birds must be released as soon as they are releasable (and seasonal conditions allow). Therefore, the 180-day limit will apply only to those birds that are not yet ready for release.

*Comment:* Rehabilitators should not need to get permission to keep birds longer than 180 days for foster parenting.

*Service response:* The purpose of the rehabilitation permit is to authorize possession of birds so that they may be provided the rehabilitative care necessary to return them to the wild. If a bird is not ready for release before the 180-day limit, but is still expected to be releasable in the future, and is suitable for foster parenting, it may be used for that purpose until released. If the rehabilitator's veterinarian determines that a bird is permanently injured and nonreleasable, the rehabilitator may submit a written request to possess the bird for foster-parenting purposes. If the request is justified and approved, the Regional permit office will amend the rehabilitator's permit to reflect this authority.

*Comment:* The rule should include the guidelines for release that are contained within the Minimum Standards for Wildlife Rehabilitation, or it should provide some other guidance for when the bird is ready for release.

*Service response:* Generally, regulations should state what is required, not what is recommended. In the interest of flexibility, the rule does not establish regulatory requirements for release of birds. There are simply too many variables. The Minimum Standards and other publications of the rehabilitation community, as well as the guidance provided by peers, can serve as valuable sources for determining suitable conditions for release.

*Comment:* Rehabilitators should not have to coordinate with State and local wildlife officials about where to release the birds. Most local and State wildlife officials would not want to be consulted so frequently.

*Service response:* This was a recommendation in the proposed rule, not a requirement. Since it was not a

requirement, we have removed it from the final rule.

*Comment:* State conservation agencies should be notified before rehabilitators release listed species.

*Service response:* The rule provides that if a bird is of a species that is listed by the Federal Government as threatened or endangered, the rehabilitator must coordinate with the Service before releasing the bird. In many cases, we will involve the State because we work in partnership with State agencies on issues involving wildlife. However, some States may not wish the Federal Government to mandate State involvement in the release of federally listed species via Federal regulation. It is more appropriate that State regulations, rather than Federal, address whether or not rehabilitators must contact the State before releasing listed species.

*Comment:* The rehabilitator should not need to contact the Service before releasing a threatened or endangered species.

*Service response:* We strongly disagree with this comment. The determination of where to release an individual of a listed species is more critical than it is for nonlisted species in terms of overall success of the species. The optimal release site may be one where the individual bird is most likely to rejoin wild populations and reproduce. The Service's biologists will often have information the rehabilitator does not regarding the location and viability of wild populations of listed migratory bird species.

*Euthanasia § 21.31(e)(4)(iii) and § 21.31(e)(4)(iv).* *Comment:* You should delete the requirement to euthanize birds that cannot feed themselves, perch upright, or ambulate; or are blind, or require amputation of a leg, foot, or wing at the elbow or above. Some birds with these conditions can lead useful lives as educational birds or foster parents for juvenile migratory birds in rehabilitation. These decisions should be left up to the permittee and the veterinarian.

*Service response:* The euthanasia requirements are based on humane consideration for the birds. The handicaps and stress caused by these type of injuries frequently lead to repeated additional injuries and ailments throughout the duration of the bird's life. The Service does not believe that birds should be subjected to this trauma and poor quality of life for the sake of their human keepers, even if such birds could be used as educational tools. Educational programs face no shortage of less disabled nonreleasable birds. However, because extraordinary

circumstances may warrant an exception to this rule, we have revised the rule to include the following narrow exemption: The permit issuing office may waive the euthanasia requirement where (1) a veterinarian makes a written recommendation that the bird should be kept alive despite the severity of its injuries, including an analysis of why the bird is not expected to experience the injuries and/or ailments that typically occur in birds with these injuries, and a commitment (from the veterinarian) to provide medical care for the bird for the duration of its life, including complete examinations at least once a year; and (2) a placement is available for the bird with a person or facility authorized to possess it (e.g., someone with a migratory bird education permit), where it will be provided that veterinary care.

*Comment:* If a permitted rehabilitation facility is willing to take on the burden of caring for birds with the types of injuries for which the rule requires euthanasia, why not let them?

*Service response:* First and foremost, the Service considers keeping a bird alive under these conditions to be inhumane (see above). Secondly, the purpose of the rehabilitation permit is to recover birds for release to the wild, not to retain birds in captivity. Nonreleasable birds must be transferred to another permit to be legally possessed. Most rehabilitated birds that are kept in captivity are transferred to an educational use permit, which requires that the bird be used for conservation education. The Service does not issue permits simply to keep birds in captivity. Allowing people to maintain migratory birds in sanctuary situations would compromise the status of migratory birds as wildlife. We believe that this outcome would be detrimental to migratory birds and would constitute an abrogation of our responsibility to protect and conserve wildlife.

*Comment:* The mandatory euthanasia requirements will stop people from bringing sick and injured birds to rehabilitators.

*Service response:* We think this scenario is highly unlikely. People bring birds to rehabilitators out of humane consideration for the birds. The euthanasia requirements are borne from the same humane consideration. If a bird has sustained trauma and injuries that are likely to cause the bird stress, pain, and/or further injury throughout the duration of its life, euthanasia is the kindest, most humane treatment people can provide.

*Comment:* Euthanasia for these types of injuries should only be mandatory if